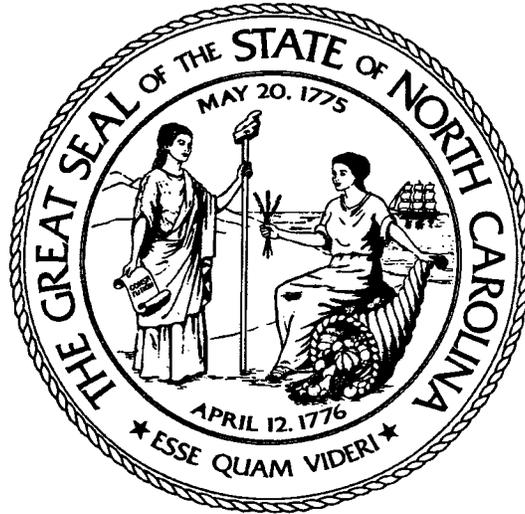


**LEGISLATIVE
RESEARCH COMMISSION**

ADMINISTRATIVE PROCEDURE ACT



**REPORT TO THE
1991 GENERAL ASSEMBLY
OF NORTH CAROLINA
1991 SESSION**

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STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611



December 14, 1990

TO THE MEMBERS OF THE 1991 GENERAL ASSEMBLY:

The Legislative Research Commission herewith submits to you for your consideration its final report on administrative rule-making, administrative hearings, and the Administrative Rules Review Commission. The report was prepared by the Legislative Research Commission's Committee on the Administrative Procedure Act's Rule-Making Process, the Office of Administrative Hearings, and the Administrative Rules Review Commission pursuant to Section 2.1(6) of Chapter 802 of the 1989 Session Laws.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "J. Mavretic".

Josephus L. Mavretic
Speaker

A handwritten signature in cursive script, appearing to read "Henson P. Barnes".

Henson P. Barnes
President Pro Tempore

Cochairmen
Legislative Research Commission



1989-1990

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PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is co-chaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

At the direction of the 1989 General Assembly, the Legislative Research Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Co-chairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Co-chairs, one from each house of the General Assembly, were designated for each committee.

The study of administrative rule-making, administrative hearings, and the Administrative Rules Review Commission was authorized by Section 2.1(6) of Chapter 802 of the 1989 Session Laws (1989 Session). That act states that the Commission may consider Senate Bill 535 and Senate Joint Resolution 1003 (HJR 1459) in determining the nature, scope, and aspects of the study. Senate Bill 535 proposed a substantial rewrite of the rule-making provisions of Chapter 150B of the General Statutes, the Administrative Procedure Act. Senate Joint Resolution 1003 (HJR 1459) proposed a study of the operations of the Office of Administrative Hearings and the Administrative Rules Review Commission. The relevant portions of Chapter 802 and

Senate Joint Resolution 1003 (HJR 1459) are included in Appendix A. The Legislative Research Commission grouped this study in its Government Regulation area under the direction of Senator Robert L. Martin. The Committee was chaired by Senator Joseph E. Johnson and Representative Donald M. Dawkins. The full membership of the Committee is listed in Appendix B of this report. A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.

COMMITTEE PROCEEDINGS

The Administrative Procedure Act (APA) Study Committee met 4 times. The meetings focused on improving the administrative rule-making process and the administrative hearing process.

JANUARY 8, 1990

At its initial meeting January 8, 1990, the Committee heard from three speakers. The first speaker, Julian Mann, Executive Director of the Office of Administrative Hearings, recounted the many studies that had been done on the Office of Administrative Hearings (OAH) over the past five years. He suggested that the Committee take time to review the present issues in light of those studies and to synthesize their results in the Committee's work. Mr. Mann recommended that the Committee look at a number of issues including whether OAH should continue to publish the North Carolina Register and act as codifier of the North Carolina Administrative Code, whether administrative law judges (ALJs) should be given clear authority to make dispositive pre-trial rulings, and whether the ALJs should be given the power to make a final agency decision on the merits of a case.

Susan Frost, Commission Counsel for the Administrative Rules Review Commission (ARRC), gave the Committee a brief history of the ARRC. Originally part of the legislature, the ARRC became part of the executive branch when the APA underwent a major revision in 1986. In July 1988, the ARRC was separated from the Office of Administrative Hearings and created as a separate agency. The function of the ARRC is to review proposed agency rules to determine that those rules:

- (1) have adequate statutory authority;
- (2) are clearly and unambiguously drawn; and
- (3) are reasonably necessary.

Ms. Frost noted two problems for the Committee's review. The first involved the ARRC's limited authority to deal with objectionable rules. Although the ARRC can object to a rule and delay its effective date for 90 days, after that time the rule objected to can still go into effect and the agency may enforce it. The second issue involved exemptions from rules review currently held by the Department of Correction, the Department of Revenue, and the Department of Transportation.

John Barkley, Office of General Counsel, Department of Environment, Health, and Natural Resources made the final presentation to the Committee. He outlined for the Committee the procedures and time frames for adopting agency rules. Mr. Barkley noted that the minimum time to adopt rules for the Commission on Health Services was approximately six to seven months and some rules can take years to final publication. Mr. Barkley noted that he would like to see the process streamlined so that a rule could be finalized within 4 to 6 months.

MARCH 2, 1990

At the meeting on March 2, 1990, the Committee addressed a number of issues that had been reviewed at its initial meeting. Mr. John N. (Nick) Fountain, outlined for the Committee the N.C. Bar Association Task Force Recommendations, published in January 1989. Of special interest to the Committee was the issue of granting additional authority to the ARRC to deal with objectionable rules. The legislation suggested by the Task Force report proposed to shift the burden of proof in a judicial proceeding on a rule to which the ARRC had objected, to the agency promulgating the rule. Questions were raised about the constitutionality of giving the ARRC veto authority over rules.

Next on the agenda, Sabra Faires, Fiscal Research Division, explained Senate Bill 535, introduced by Senator Joseph E. Johnson in the 1989 Session. At the conclusion of Ms. Faires' presentation, the Committee discussed the issue of giving the authority to make final agency decisions to the ALJ. Mr. Ward Purrington, Legislative Counsel, Governor's Office, presented the views of the administration. To remove the final agency decision from the agency and place it in the hands of OAH would be inconsistent with the purposes of having administrative agencies and would deprive citizens of the benefit of agency expertise and judgment. Mr. Purrington also raised a question of whether such a change in the State's administrative laws would conflict with federal law and jeopardize federal funding in a number of programs.

Mr. Dan McLawhorn, Assistant Attorney General, also spoke on the issue of final agency decisionmaking. The position of the Attorney General's Office is that to vest

the authority to make the final agency decision with the ALJs would, in effect, be creating a new court. The North Carolina Constitution prohibits the General Assembly from doing this by legislation. N.C. Const. Art. IV, Sec. 3. Therefore, to vest final agency decisionmaking authority in the ALJs would require a constitutional amendment.

The Committee also heard from William C. Deal, Jr., Assistant Secretary, Department of Transportation, Myron C. Banks, Deputy Secretary, Department of Revenue, and Ms. Lorrie L. Dollar, Legal Counsel, Department of Correction. All three spoke on the issue of why their Department was currently exempt from the APA's rule-making procedures and why that exemption should continue.

October 16, 1990

At its first fall meeting, October 16, 1990, the Committee began its review of proposed legislation affecting both the rule-making process and administrative hearings. The draft legislation on administrative rule-making before the Committee was based upon Senate Bill 535. It proposed a comprehensive procedure for adopting and publishing rules and would have brought the Utilities Commission, the Industrial Commission, the Employment Security Commission and the Departments of Correction, Transportation, and Revenue under the rule-making provisions of the Administrative Procedure Act.

The bill on rule-making had general support from the Bar Association and from the ARRC. Several amendments were proposed by each of these two groups and were discussed by the Committee.

Representatives from the Commissions and Departments made subject to the rule-making provisions of the APA spoke to the Committee expressing their opposition to inclusion in the bill. The Committee voted to remove the Utilities Commission from coverage of the rule-making provisions of the draft bill, but to require it to publish its rules in the North Carolina Administrative Code.

No final action was taken on any of the proposed amendments to the draft bill and a final meeting for resolution of all issues was set for November 15, 1990.

November 15, 1990

At its final meeting, the Committee again heard presentations from the Industrial Commission, Employment Security Commission, Department of Correction, Department of Revenue, and Department of Transportation requesting that they be removed from the rule-making provisions in the draft legislation under discussion. Upon the representations by these agencies that they had adequate safeguards and rule-making procedures already in effect, the Committee voted to exempt them from coverage, but to require them to publish their rules in the North Carolina Administrative Code.

The Committee concluded its discussions and recommended two bills to the 1991 General Assembly: Legislative Proposal I, A BILL TO BE ENTITLED AN ACT TO IMPROVE THE ADMINISTRATIVE RULE-MAKING PROCESS, and Legislative Proposal II, A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO THE

**LAWS GOVERNING ADMINISTRATIVE HEARINGS AND TO REPEAL THE
SUNSET ON THE REVISED ADMINISTRATIVE PROCEDURE ACT.**

COMMITTEE RECOMMENDATIONS AND LEGISLATIVE PROPOSALS

The Committee recommends the following legislation to the 1991 General Assembly. The Committee's legislative proposals consist of two bills: one bill addresses the administrative rule-making process, the other covers administrative hearings before the Office of Administrative Hearings. Each of the proposed bills is followed by an explanation of the proposal. A fiscal note has been prepared indicating the fiscal impact of implementing the proposed legislation on rule-making.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S or H

D

Proposed APA Study Committee Bill (1.3)
91-LJ-8

THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION

Short Title: Improve APA Rule-Making Process.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE THE ADMINISTRATIVE RULE-MAKING PROCESS.
3 The General Assembly of North Carolina enacts:
4 Section 1. Chapter 150B of the General Statutes is amended by adding a
5 new Article to read:
6 "ARTICLE 2A.
7 "Rules.
8 "Part 1. General Provisions.
9 "§ 150B-18. Scope and effect.
10 This Article applies to an agency's exercise of its authority to adopt a rule. A rule
11 is not valid unless it is adopted in substantial compliance with this Article.
12 "§ 150B-19. Restrictions on what can be adopted as a rule.
13 An agency may not adopt a rule that does one or more of the following:
14 (1) Implements or interprets a law unless that law or another law
15 specifically authorizes the agency to do so.
16 (2) Enlarges the scope of a profession, occupation, or field of endeavor
17 for which an occupational license is required.
18 (3) Imposes criminal liability or a civil penalty for an act or omission,
19 including the violation of a rule, unless a law specifically
20 authorizes the agency to do so or a law declares that violation of
21 the rule is a criminal offense or is grounds for a civil penalty.
22 (4) Repeats the content of a law, a rule, or a federal regulation.

- 1 (5) Establishes a fee or other charge for providing a service in
2 fulfillment of a duty unless a law specifically authorizes the agency
3 to do so or the fee or other charge is for one of the following:
4 a. A service to a State, federal, or local governmental unit.
5 b. A copy of part or all of a State publication or other
6 document, the cost of mailing a document, or both.
7 c. A transcript of a public hearing.
8 d. A conference, workshop, or course.
9 e. Data processing services.
10 (6) Allows the agency to waive or modify a requirement set in a rule
11 unless a rule establishes specific guidelines the agency must follow
12 in determining whether to waive or modify the requirement.

13 **"§ 150B-20. Petitioning an agency to adopt a rule.**

14 (a) Petition.-- A person may petition an agency to adopt a rule by submitting to
15 the agency a written rule-making petition requesting the adoption. A person may
16 submit written comments with a rule-making petition. If a rule-making petition
17 requests the agency to create or amend a rule, the person must submit the proposed
18 text of the requested rule change and a statement of the effect of the requested rule
19 change. Each agency must establish by rule the procedure for submitting a rule-
20 making petition to it and the procedure the agency follows in considering a rule-
21 making petition.

22 (b) Time.-- An agency must grant or deny a rule-making petition submitted to it
23 within 30 days after the date the rule-making petition is submitted, unless the agency
24 is a board or commission. If the agency is a board or commission, it must grant or
25 deny a rule-making petition within 120 days after the date the rule-making petition is
26 submitted.

27 (c) Action.-- If an agency denies a rule-making petition, it must send the person
28 who submitted the petition a written statement of the reasons for denying the
29 petition. If an agency grants a rule-making petition, it must inform the person who
30 submitted the rule-making petition of its decision and must initiate rule-making
31 proceedings. When an agency grants a rule-making petition requesting the creation
32 or amendment of a rule, the notice of rule-making it publishes in the North Carolina
33 Register may state that the agency is initiating rule-making proceedings as the result
34 of a rule-making petition, state the name of the person who submitted the rule-
35 making petition, set out the text of the requested rule change submitted with the rule-
36 making petition, and state whether the agency endorses the proposed rule change.

37 (d) Review.-- Denial of a rule-making petition is a final agency decision and is
38 subject to judicial review under Article 4 of this Chapter. Failure of an agency to
39 grant or deny a rule-making petition within the time limits set in subsection (b) is a
40 denial of the rule-making petition.

41 **"§ 150B-21. Agency must designate rule-making coordinator.**

42 Each agency must designate one or more rule-making coordinators to oversee the
43 agency's rule-making functions. The coordinator must prepare notices of public

1 hearings, coordinate access to the agency's rules, and serve as the liaison between the
2 agency, other agencies, and the public in the rule-making process.

3 "Part 2. Adoption of Rules.

4 "§ 150B-21.1. Procedure for adopting a temporary rule.

5 (a) Adoption. An agency may adopt a temporary rule without prior notice or
6 hearing or upon any abbreviated notice or hearing the agency finds practical when it
7 finds that adherence to the notice and hearing requirements of this Part would be
8 contrary to the public interest and that the immediate adoption of the rule is required
9 by one or more of the following:

- 10 (1) A serious and unforeseen threat to the public health, safety, or
11 welfare.
- 12 (2) The effective date of a recent act of the General Assembly or the
13 United States Congress.
- 14 (3) A recent change in federal or State budgetary policy.
- 15 (4) A federal regulation.
- 16 (5) A court order.

17 An agency must prepare a written statement of its findings of need for a temporary
18 rule. The statement must be signed by the head of the agency adopting the rule and,
19 in some circumstances, by the Governor or another member of the Council of State.
20 The statement must be signed by the Governor if the Governor designates the head
21 of the agency adopting the rule or the agency adopting the rule is located within a
22 department whose secretary is appointed by the Governor. The statement must be
23 signed by the appropriate member of the Council of State if the agency adopting the
24 rule is located within a department headed by a member of the Council of State.

25 An agency must begin rule-making proceedings for a permanent rule by the day it
26 adopts a temporary rule. An agency begins rule-making proceedings for a permanent
27 rule by publishing in the North Carolina Register notice of its intent to adopt a
28 permanent rule.

29 (b) Review.-- When an agency adopts a temporary rule it must submit the rule, the
30 agency's written statement of its findings of need for the rule, and the notice of intent
31 to adopt a permanent rule to the Codifier of Rules. Within one business day of the
32 day an agency submits a temporary rule, the Codifier of Rules must review the
33 agency's written statement of findings of need for the rule to determine whether the
34 statement of need meets the criteria listed in subsection (a). In reviewing the
35 statement, the Codifier of Rules may consider any information submitted by the
36 agency or another person. If the Codifier of Rules finds that the statement meets the
37 criteria, the Codifier of Rules must notify the head of the agency and enter the rule
38 in the North Carolina Administrative Code.

39 If the Codifier of Rules finds that the statement does not meet the criteria, the
40 Codifier of Rules must immediately notify the head of the agency. The agency may
41 supplement its statement of need with additional findings or submit a new statement.
42 If the agency does not provide additional findings or the Codifier of Rules again finds
43 that the statement does not meet the criteria, the Codifier of Rules shall return the
44 rule to the agency. A decision on whether a proposed temporary rule does or does

1 not meet the criteria in subsection (a) is subject to judicial review under Article 4 of
2 this Chapter.

3 (c) Standing.-- A person whose rights, duties, or privileges may be affected by a
4 temporary rule adopted by an agency may file an action for declaratory judgment in
5 Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General
6 Statutes. The court shall determine whether the rule meets the standards in G.S.
7 150B-21.9 for review of a permanent rule. The court may not grant an ex parte
8 temporary restraining order.

9 (d) Expiration.-- A temporary rule expires on the date specified in the rule or
10 180 days from the date the rule becomes effective, whichever comes first.

11 **"§ 150B-21.2. Procedure for adopting a permanent rule.**

12 (a) Notice.-- Before an agency adopts a permanent rule, it must publish notice of
13 its intent to adopt a permanent rule in the North Carolina Register and as required
14 by any other law. The notice published in the North Carolina Register must include
15 all of the following:

16 (1) Either the text of the proposed rule or a statement of the subject
17 matter of the proposed rule-making.

18 (2) A short explanation of the reason for the proposed action.

19 (3) A citation to the law that gives the agency the authority to adopt
20 the proposed rule, if the notice includes the text of the proposed
21 rule, or a citation to the law that gives the agency the authority to
22 adopt a rule on the subject matter of the proposed rule-making, if
23 the notice includes only a statement of the subject matter of the
24 proposed rule-making.

25 (4) The proposed effective date of the proposed rule, if the notice
26 includes the text of the proposed rule, or the proposed effective
27 date of a rule adopted on the subject matter of the proposed rule-
28 making, if the notice includes only a statement of the subject
29 matter of the proposed rule-making.

30 (5) The date, time, and place of any public hearing scheduled on the
31 proposed rule or subject matter of the proposed rule-making.

32 (6) Instructions on how a person may demand a public hearing on a
33 proposed rule if the notice does not schedule a public hearing on
34 the proposed rule and subsection (c) requires the agency to hold a
35 public hearing on the proposed rule when requested to do so.

36 (7) The period of time during which and the person to whom written
37 comments may be submitted on the proposed rule or subject
38 matter of the proposed rule-making.

39 (8) If a fiscal note has been prepared for the proposed rule or will be
40 prepared when a rule is proposed on the subject matter of the
41 proposed rule-making, a statement that a copy of the fiscal note
42 can be obtained from the agency.

43 (b) Mailing List.-- An agency must maintain a mailing list of persons who have
44 requested notice of rule-making. When an agency publishes a rule-making notice in

1 the North Carolina Register, it must mail a copy of the notice to each person on the
2 mailing list who has requested notice of rule-making proceedings on the rule or the
3 subject matter for rule-making described in the notice. An agency may charge an
4 annual fee to each person on the agency's mailing list to cover copying and mailing
5 costs.

6 (c) Hearing.-- An agency must hold a public hearing on a rule it proposes to
7 adopt in two circumstances and may hold a public hearing in other circumstances.
8 When an agency is required to hold a public hearing on a proposed rule or decides
9 to hold a public hearing on a proposed rule when it is not required to do so, the
10 agency must publish in the North Carolina Register a notice of the date, time, and
11 place of the public hearing. The hearing date of a public hearing held after the
12 agency publishes notice of the hearing in the North Carolina Register must be at least
13 15 days after the date the notice is published.

14 An agency must hold a public hearing on a rule it proposes to adopt in the
15 following two circumstances:

16 (1) The agency publishes a statement of the subject matter of the
17 proposed rule-making in the notice in the North Carolina Register.

18 (2) The agency publishes the text of the proposed rule in the notice in
19 the North Carolina Register and all the following apply:

20 a. The notice does not schedule a public hearing on the
21 proposed rule.

22 b. Within 15 days after the notice is published, the agency
23 receives a written request for a public hearing on the
24 proposed rule.

25 c. The proposed rule is not part of a rule-making proceeding
26 the agency initiated by publishing a statement of the subject
27 matter of proposed rule-making.

28 d. The proposed text is not a changed version of proposed text
29 the agency previously published in the course of rule-
30 making proceedings but did not adopt.

31 (d) Text After Subject-Matter Notice.-- When an agency publishes notice of the
32 subject matter of proposed rule-making in the North Carolina Register, it must
33 subsequently publish in the North Carolina Register the text of the rule it proposes to
34 adopt as a result of the public hearing and of any comments received on the subject
35 matter. An agency may not publish the proposed text of a rule for which it published
36 a subject-matter notice before the public hearing on the subject matter.

37 (e) Comments.-- An agency must accept comments on the text of a proposed rule
38 published in the North Carolina Register for at least 15 days after the text is
39 published or until the date of any public hearing held on the proposed rule,
40 whichever is longer. An agency must accept comments on a statement of the subject
41 matter of proposed rule-making until the public hearing on the subject matter. An
42 agency must consider fully all written and oral comments received.

43 (f) Adoption.-- An agency may not adopt a rule until the time for commenting on
44 the proposed text of the rule has elapsed. An agency may not adopt a rule that

1 differs substantially from the text of a proposed rule published in the North Carolina
2 Register unless the agency publishes the text of the proposed different rule in the
3 North Carolina Register and accepts comments on the proposed different rule for the
4 time set in subsection (e).

5 An adopted rule differs substantially from a proposed rule if it does one or more
6 of the following:

7 (1) Affects the interests of persons who, based on the proposed text of
8 the rule, could not reasonably have determined that the rule would
9 affect their interests.

10 (2) Addresses a subject matter or an issue that is not addressed in the
11 proposed text of the rule.

12 (3) Produces an effect that could not reasonably have been expected
13 based on the proposed text of the rule.

14 (g) Explanation.-- An agency must issue a concise written statement explaining
15 why the agency adopted a rule if, within 30 days after the agency adopts the rule, a
16 person asks the agency to do so. The explanation must state the principal reasons for
17 and against adopting the rule and must discuss why the agency rejected any
18 arguments made or considerations urged against the adoption of the rule.

19 (h) Record.-- An agency must keep a record of a rule-making proceeding. The
20 record must include all written comments received, a transcript or recording of any
21 public hearing held on the rule, and any written explanation made by the agency for
22 adopting the rule.

23 **"§ 150B-21.3. Effective date of rules.**

24 (a) Temporary Rule.-- A temporary rule becomes effective on the date the
25 Codifier of Rules enters the rule in the North Carolina Administrative Code.

26 (b) Permanent Rule.-- A permanent rule approved by the Commission becomes
27 effective five business days after the Commission delivers the rule to the Codifier of
28 Rules, unless the agency adopting the rule specifies a later effective date. If the
29 agency specifies a later effective date, the rule becomes effective on that date.

30 A permanent rule that is not approved by the Commission because the
31 Commission finds the rule is not clear and unambiguous or is not reasonably
32 necessary to fulfill a duty delegated to the agency by the General Assembly becomes
33 effective five business days after the agency adopting the rule delivers the rule to the
34 Codifier of Rules, unless the agency adopting the rule specifies a later effective date.
35 If the agency specifies a later effective date, the rule becomes effective on that date.

36 A permanent rule that is not approved by the Commission because the
37 Commission finds the rule is not within the authority delegated to the agency by the
38 General Assembly becomes effective five business days after the agency adopting the
39 rule delivers to the Codifier of Rules either a court order directing the entry or a
40 declaratory judgment determining that the rule is within the authority delegated to
41 the agency by the General Assembly, unless the agency adopting the rule specifies a
42 later effective date. If the agency specifies a later effective date, the rule becomes
43 effective on that date.

1 (c) OSHA Standard.-- A permanent rule concerning an occupational safety and
2 health standard that is adopted by the Occupational Safety and Health Division of
3 the Department of Labor and is identical to a federal regulation promulgated by the
4 Secretary of the United States Department of Labor becomes effective on the date the
5 Division delivers the rule to the Codifier of Rules, unless the Division specifies a later
6 effective date. If the Division specifies a later effective date, the rule becomes
7 effective on that date.

8 **"§ 150B-21.4. Fiscal notes on rules.**

9 (a) State Funds.-- Before an agency publishes in the North Carolina Register the
10 proposed text of a permanent rule change that would require the expenditure or
11 distribution of funds subject to the Executive Budget Act, Article 1 of Chapter 143, it
12 must submit the text of the proposed rule change and a fiscal note on the proposed
13 rule change to the Director of the Budget and obtain certification from the Director
14 that the funds that would be required by the proposed rule change are available. The
15 fiscal note must state the amount of funds that would be expended or distributed as a
16 result of the proposed rule change and explain how the amount was computed. The
17 Director of the Budget must certify a proposed rule change if funds are available to
18 cover the expenditure or distribution required by the proposed rule change.

19 (b) Local Funds.-- Before an agency publishes in the North Carolina Register the
20 proposed text of a permanent rule change that would affect the expenditures or
21 revenues of a unit of local government, it must submit the text of the proposed rule
22 change and a fiscal note on the proposed rule change to the Fiscal Research Division
23 of the General Assembly, the Office of State Budget and Management, the North
24 Carolina Association of County Commissioners, and the North Carolina League of
25 Municipalities. The fiscal note must state the amount by which the proposed rule
26 change would increase or decrease expenditures or revenues of a unit of local
27 government and must explain how the amount was computed.

28 (c) Errors.-- An erroneous fiscal note prepared in good faith does not affect the
29 validity of a rule.

30 **"§ 150B-21.5. Circumstances when notice and rule-making hearing not required.**

31 (a) Amendment.-- An agency is not required to publish a notice of rule-making
32 in the North Carolina Register or hold a public hearing when it proposes to amend a
33 rule, without changing the substance of the rule, to do one of the following:

- 34 (1) Reletter or renumber the rule or subparts of the rule.
- 35 (2) Substitute one name for another when an organization or position
36 is renamed.
- 37 (3) Correct a citation in the rule to another rule or law when the
38 citation has become inaccurate since the rule was adopted because
39 of the repeal or renumbering of the cited rule or law.
- 40 (4) Change information that is readily available to the public, such as
41 an address or a telephone number.
- 42 (5) Correct a typographical error made in entering the rule in the
43 North Carolina Administrative Code.

1 (6) Change a rule in response to a request or an objection by the
2 Commission.

3 (b) Repeal.-- An agency is not required to publish a notice of rule-making in the
4 North Carolina Register or hold a public hearing when it proposes to repeal a rule if
5 the law under which the rule was adopted is repealed, or if the law under which the
6 rule was adopted or the rule itself is declared unconstitutional.

7 (c) OSHA Standard.-- The Occupational Safety and Health Division of the
8 Department of Labor is not required to publish a notice of rule-making in the North
9 Carolina Register or hold a public hearing when it proposes to adopt a rule that
10 concerns an occupational safety and health standard and is identical to a federal
11 regulation promulgated by the Secretary of the United States Department of Labor.
12 The Occupational Safety and Health Division is not required to submit to the
13 Commission for review a rule for which notice and hearing is not required under this
14 subsection.

15 **"§ 150B-21.6. Incorporating material in a rule by reference.**

16 An agency may incorporate the following material by reference in a rule without
17 repeating the text of the referenced material:

18 (1) Another rule or part of a rule adopted by the agency.

19 (2) All or part of a code, standard, or regulation adopted by another
20 agency, the federal government, or a generally recognized
21 organization or association.

22 (3) Material adopted to meet a requirement of the federal government.

23 In incorporating material by reference, the agency must designate in the rule
24 whether or not the incorporation includes subsequent amendments and editions of
25 the referenced material. The agency can change this designation only by a
26 subsequent rule-making proceeding. The agency must have copies of the
27 incorporated material available for inspection and must specify in the rule both
28 where copies of the material can be obtained and the cost on the date the rule is
29 adopted of a copy of the material.

30 A statement in a rule that a rule incorporates material by reference in accordance
31 with former G.S. 150B-14(b) is a statement that the rule does not include subsequent
32 amendments and editions of the referenced material. A statement in a rule that a
33 rule incorporates material by reference in accordance with former G.S. 150B-14(c) is
34 a statement that the rule includes subsequent amendments and editions of the
35 referenced material.

36 **"§ 150B-21.7. Effect of transfer of duties or termination of agency on rules.**

37 When a law that authorizes an agency to adopt a rule is repealed and another law
38 gives the same or another agency substantially the same authority to adopt a rule, the
39 rule remains in effect until the agency amends or repeals the rule. When a law that
40 authorizes an agency to adopt a rule is repealed and another law does not give the
41 same or another agency substantially the same authority to adopt a rule, a rule
42 adopted under the repealed law is repealed as of the date the law is repealed.

43 When an executive order abolishes part or all of an agency and transfers a function
44 of that agency to another agency, a rule concerning the transferred function remains

1 in effect until the agency to which the function is transferred amends or repeals the
2 rule. When an executive order abolishes part or all of an agency and does not
3 transfer a function of that agency to another agency, a rule concerning a function
4 abolished by the executive order is repealed as of the effective date of the executive
5 order.

6 The Director of Fiscal Research of the General Assembly must notify the Codifier
7 of Rules when a rule is repealed under this section. When notified of a rule repealed
8 under this section, the Codifier of Rules must enter the repeal of the rule in the
9 North Carolina Administrative Code.

10 "Part 3. Review by Commission.

11 "§ 150B-21.8. Review of rule by Commission.

12 (a) Temporary Rule.-- The Commission does not review a temporary rule.

13 (b) Permanent Rule.-- An agency must submit a permanent rule adopted by it to
14 the Commission before the rule can be included in the North Carolina
15 Administrative Code. The Commission reviews a permanent rule in accordance with
16 the standards in G.S. 150B-21.9 and follows the procedure in this Part in its review of
17 a permanent rule.

18 (c) Scope.-- When the Commission reviews an amendment to a rule, it may
19 review the entire rule that is being amended. If the Commission objects to part of a
20 rule that is within its scope of review but is not changed by a rule amendment, the
21 part of the rule remains in effect. If the Commission objects on the basis that the
22 agency did not act within its statutory authority in adopting that part of the rule, the
23 part of the rule remains in effect until the Commission obtains a declaratory
24 judgment that the part of the rule is not within the agency's statutory authority. If
25 the Commission objects on the basis that the rule is not clear and unambiguous or is
26 not reasonably necessary, the part of the rule remains in effect until changed by the
27 agency. When the Commission objects to part of a rule under this subsection, the
28 Commission must notify the Codifier of Rules and the Codifier of Rules must enter
29 the objection in the North Carolina Administrative Code.

30 "§ 150B-21.9. Standards and timetable for review by Commission.

31 (a) Standards.-- The Commission must determine whether a rule meets all of the
32 following criteria:

- 33 (1) It is within the authority delegated to the agency by the General
34 Assembly.
35 (2) It is clear and unambiguous.
36 (3) It is reasonably necessary to fulfill a duty delegated to the agency
37 by the General Assembly.

38 The Commission may determine if a rule before it for review was adopted in
39 accordance with Part 2 of this Article. The Commission must notify the agency that
40 adopted the rule and the Codifier of Rules if it determines that a rule was not
41 adopted in accordance with Part 2 of this Article.

42 (b) Timetable.-- The Commission must review a rule submitted to it on or before
43 the 20th of a month by the last day of the next month. The Commission must review

1 a rule submitted to it after the 20th of a month by the last day of the second
2 subsequent month.

3 **"§ 150B-21.10. Commission action on permanent rule.**

4 At the first meeting at which a permanent rule is before the Commission for
5 review, the Commission must take one of the following actions:

- 6 (1) Approve the rule, if the Commission determines that the rule
7 meets the standards for review.
- 8 (2) Object to the rule, if the Commission determines that the rule does
9 not meet the standards for review.
- 10 (3) Extend the period for reviewing the rule, if the Commission
11 determines it needs additional information on the rule to be able
12 to decide whether the rule meets the standards for review.

13 In reviewing a new rule or an amendment to an existing rule, the Commission may
14 request an agency to make technical changes to the rule and may condition its
15 approval of the rule on the agency's making the requested technical changes.

16 **"§ 150B-21.11. Procedure when Commission approves permanent rule.**

17 When the Commission approves a permanent rule, it must notify the agency that
18 adopted the rule of the Commission's approval and must deliver the approved rule to
19 the Codifier of Rules. The Commission must deliver an approved rule by the end of
20 the month in which the Commission approved the rule.

21 **"§ 150B-21.12. Procedure when Commission objects to a permanent rule.**

22 (a) Action.-- When the Commission objects to a permanent rule, it must send the
23 agency that adopted the rule a written statement of the objection and the reason for
24 the objection. The agency that adopted the rule must take one of the following
25 actions:

- 26 (1) Change the rule to satisfy the Commission's objection and submit
27 the revised rule to the Commission.
- 28 (2) Submit a written response to the Commission indicating that the
29 agency has decided not to change the rule.

30 An agency that is not a board or commission must take one of these actions within
31 30 days after receiving the Commission's statement of objection. A board or
32 commission must take one of these actions within 30 days after receiving the
33 Commission's statement of objection or within 10 days after the board or
34 commission's next regularly scheduled meeting, whichever comes later.

35 When an agency changes a rule in response to an objection by the Commission,
36 the Commission must determine whether the change satisfies the Commission's
37 objection. If it does, the Commission must approve the rule. If it does not, the
38 Commission must send the agency a written statement of the Commission's continued
39 objection and the reason for the continued objection.

40 A rule to which the Commission has objected remains under review by the
41 Commission until the agency that adopted the rule decides not to satisfy the
42 Commission's objection and makes a written request to the Commission to return the
43 rule to the agency. When the Commission returns a rule to which it has objected, it

1 may send to the President of the Senate and each member of the General Assembly a
2 report of its objection to the rule.

3 (b) Entry In Code.-- When the Commission returns a rule to which it has objected
4 to the agency that adopted the rule, the Commission must notify the Codifier of
5 Rules of its action and of the basis of the Commission's objection. An agency whose
6 rule is returned may file the rule with the Codifier of Rules if the Commission
7 objected to the rule because it found the rule is not clear and unambiguous or is not
8 reasonably necessary. An agency whose rule is returned may not file the rule with
9 the Codifier of Rules if the Commission objected to the rule because it found the rule
10 is not within the statutory authority of the agency, unless the agency obtains either a
11 court order directing the entry or a declaratory judgment determining that the rule is
12 within the authority delegated to the agency by the General Assembly. When the
13 Codifier of Rules enters in the North Carolina Administrative Code a rule to which
14 the Commission objected because the rule is not clear and unambiguous or is not
15 reasonably necessary, the entry must reflect the Commission's objection.

16 **"§ 150B-21.13. Procedure when Commission extends period for review of permanent**
17 **rule.**

18 When the Commission extends the period for review of a permanent rule, it must
19 notify the agency that adopted the rule of the extension and the reason for the
20 extension. After the Commission extends the period for review of a rule, it must
21 decide whether to approve or object to the rule within 70 days of the extension.

22 **"§ 150B-21.14 Public hearing on a rule.**

23 At any time before the Commission approves a rule that is before it for review or
24 returns a rule that is before it for review to the agency that adopted the rule, the
25 Commission may call a public hearing on the rule. On its own motion, the
26 Commission may also call a public hearing on a rule that is not before it for review.
27 Calling a public hearing on a rule not already before the Commission for review
28 places the rule before the Commission for review. When the Commission decides to
29 call a public hearing on a rule, it must give at least 15 days' notice of the hearing to
30 the affected agency, to those who have asked to receive notice of any public hearing
31 called on the subject matter of the rule, and to those who, as determined by the
32 Commission, may be affected by the rule.

33 After a public hearing on a rule, the Commission must approve the rule or object
34 to the rule in accordance with the standards and procedures in this Part. The
35 Commission must make its decision of whether to approve or object to the rule
36 within 70 days after the public hearing.

37 **"§ 150B-21.15 Agency has burden of persuasion on rule to which Commission objects.**

38 In a proceeding for judicial review or enforcement of a rule filed in the North
39 Carolina Administrative Code by an agency after the Commission objected to it, the
40 part of the rule to which the Commission objected is not presumed to meet the
41 standards in G.S. 150B-21.9. In these proceedings, the agency filing the rule has the
42 burden of persuading the court that the part of the rule to which the Commission
43 objected meets the standards in G.S. 150B-21.9.

1 "§ 150B-21.16. Agency may seek declaratory judgment on permanent rule to which
2 Commission objects.

3 (a) Action.-- When the Commission objects to a permanent rule adopted by an
4 agency based on a lack of statutory authority and returns the rule to the agency, the
5 agency may file an action for declaratory judgment in Wake County Superior Court
6 pursuant to Article 26 of Chapter 1 of the General Statutes. The court shall
7 determine whether the agency exceeded its statutory authority in adopting the rule.

8 (b) Record.-- Within 10 days after an agency files an action for a declaratory
9 judgment, the agency must transmit to the court the original or a certified copy of the
10 record in the Commission's review of the rule. The record consists of the rule, the
11 Commission's letter of objection to the rule, and the agency's written response to the
12 Commission's letter.

13 (c) Stay.-- During the pendency of an action for declaratory judgment, the
14 Codifier of Rules cannot accept the rule for inclusion in the North Carolina
15 Administrative Code unless the court finds it proper and determines that the agency
16 has a substantial likelihood of prevailing in the action for a declaratory judgment.

17 (d) Dismissal.-- When the agency submits to the Commission additional changes
18 to a rule that satisfy the objection while the rule is the subject of an action for a
19 declaratory judgment, the Commission must notify the court and move to dismiss the
20 action for declaratory judgment.

21 "Part 4. Publication of Code and Register.

22 "§ 150B-21.17. North Carolina Register.

23 (a) Content.-- The Codifier of Rules must publish the North Carolina Register.
24 The North Carolina Register must be published at least two times a month and must
25 contain the following:

26 (1) Notices of proposed adoptions of rules.

27 (2) Notices of receipt of a petition for municipal incorporation, as
28 required by G.S. 120-165.

29 (3) Executive orders of the Governor.

30 (4) Final decision letters from the United States Attorney General
31 concerning changes in laws that affect voting in a jurisdiction
32 subject to § 5 of the Voting Rights Act of 1965, as required by G.S.
33 120-30.9H.

34 (5) Decisions of the Tax Review Board.

35 (6) Other information the Codifier determines helpful to the public.

36 (b) Form.-- When an agency publishes notice in the North Carolina Register of
37 the proposed text of a new rule, the Codifier of Rules must publish the complete text
38 of the proposed new rule. In publishing the text of a proposed new rule, the Codifier
39 must indicate the rule is new by underlining the proposed text of the rule.

40 When an agency publishes notice in the North Carolina Register of the proposed
41 text of an amendment to an existing rule, the Codifier must publish the complete text
42 of the rule that is being amended unless the Codifier determines that publication of
43 the complete text of the rule being amended is not necessary to enable the reader to
44 understand the proposed amendment. In publishing the text of a proposed

1 amendment to a rule, the Codifier must indicate deleted text with overstrikes and
2 added text with underlines.

3 When an agency publishes notice in the North Carolina Register of the proposed
4 repeal of an existing rule, the Codifier must publish the complete text of the rule the
5 agency proposes to repeal unless the Codifier determines that publication of the
6 complete text is impractical. In publishing the text of a rule the agency proposes to
7 repeal, the Codifier must indicate the rule is to be repealed.

8 **"§ 150B-21.18. North Carolina Administrative Code.**

9 The Codifier of Rules must compile all rules into a Code known as the North
10 Carolina Administrative Code. The format and indexing of the Code must conform
11 as nearly as practical to the format and indexing of the North Carolina General
12 Statutes. The Codifier must publish printed copies of the Code and may publish the
13 Code in other forms. The Codifier must keep the Code current by publishing the
14 Code in a loose-leaf format and periodically providing new pages to be substituted
15 for outdated pages, by publishing the Code in volumes and periodically publishing
16 cumulative supplements, or by another means. The Codifier must keep superseded
17 rules.

18 **"§ 150B-21.19. Requirements for including rule in Code.**

19 To be acceptable for inclusion in the North Carolina Administrative Code, a rule
20 must:

- 21 (1) Cite the law under which the rule is adopted.
- 22 (2) Be signed by the head of the agency or the rule-making
23 coordinator for the agency that adopted the rule.
- 24 (3) Be in the physical form specified by the Codifier of Rules.
- 25 (4) Have been reviewed by the Commission, if the rule is a permanent
26 rule.

27 **"§ 150B-21.20. Codifier's authority to revise form of rules.**

28 (a) Authority.-- After consulting with the agency that adopted the rule, the
29 Codifier of Rules may revise the form of a rule submitted for inclusion in the North
30 Carolina Administrative Code within 10 business days after the rule is submitted to
31 do one or more of the following:

- 32 (1) Rearrange the order of the rule in the Code or the order of the
33 subsections, subdivisions, or other subparts of the rule.
- 34 (2) Provide a catchline or heading for the rule or revise the catchline
35 or heading of the rule.
- 36 (3) Reletter or renumber the rule or the subparts of the rule in
37 accordance with a uniform system.
- 38 (4) Rearrange definitions and lists.
- 39 (5) Make other changes in arrangement or in form that do not change
40 the substance of the rule and are necessary or desirable for a clear
41 and orderly arrangement of the rule.

42 (b) Effect.-- Revision of a rule by the Codifier of Rules under this section does
43 not affect the effective date of the rule or require the agency to readopt or resubmit
44 the rule. When the Codifier of Rules revises the form of a rule, the Codifier of Rules

1 must send the agency that adopted the rule a copy of the revised rule. The revised
2 rule is the official rule.

3 **"§ 150B-21.21. Publication of rules of North Carolina State Bar and exempt agencies.**

4 (a) State Bar.-- The North Carolina State Bar must submit a rule adopted or
5 approved by it and entered in the minutes of the North Carolina Supreme Court to
6 the Codifier of Rules for inclusion in the North Carolina Administrative Code. The
7 State Bar must submit a rule within 15 days after it is entered in the minutes of the
8 Supreme Court.

9 (b) Exempt Agencies.-- Notwithstanding G.S. 150B-1, an agency exempted from
10 this Article by that statute must submit a temporary or permanent rule adopted by it
11 to the Codifier of Rules for inclusion in the North Carolina Administrative Code.
12 An exempt agency must submit a rule to the Codifier of Rules within 15 days after it
13 adopts the rule.

14 (c) Publication.-- The Codifier of Rules must compile, make available for public
15 inspection, and publish a rule included in the North Carolina Administrative Code
16 under this section in the same manner as other rules in the Code.

17 **"§ 150B-21.22. Effect of inclusion in Code.**

18 Official or judicial notice can be taken of a rule in the North Carolina
19 Administrative Code and shall be taken when appropriate. Codification of a rule in
20 the North Carolina Administrative Code is **prima facie** evidence of compliance with
21 this Article.

22 **"§ 150B-21.23. Rule publication manual.**

23 The Codifier of Rules must publish a manual that sets out the form and method
24 for publishing a notice of rule-making in the North Carolina Register and for filing a
25 rule in the North Carolina Administrative Code.

26 **"§ 150B-21.24. Free copies of Register and Code.**

27 (a) Register. The Codifier of Rules must distribute copies of the North Carolina
28 Register as soon after publication as practical, without charge, to the following:

29 (1) A person who receives a free copy of the North Carolina
30 Administrative Code.

31 (2) Upon request, one copy to each member of the General Assembly.

32 (b) Code. The Codifier of Rules must distribute copies of the North Carolina
33 Administrative Code as soon after publication as practical, without charge, to the
34 following:

35 (1) One copy to the board of commissioners of each county in the
36 State.

37 (2) One copy to the clerk of superior court of each county in the
38 State.

39 (3) One copy to the Commission.

40 (4) One copy to the clerk of the Supreme Court and to the clerk of
41 the Court of Appeals of North Carolina.

42 (5) One copy to the Supreme Court Library and one copy to the
43 library of the Court of Appeals.

44 (6) One copy to the Administrative Office of the Courts.

- 1 (7) One copy to the Governor.
2 (8) Five copies to the Legislative Services Commission for the use of
3 the General Assembly.
4 (9) Upon request, one copy to each State official or department to
5 whom or to which copies of the appellate division reports are
6 furnished under G.S. 7A-343.1.
7 (10) Five copies to the Division of State Library of the Department of
8 Cultural Resources pursuant to G.S. 125-11.7.

9 **"§ 150B-21.25. Paid copies of Register and Code.**

10 A person who is not entitled to a free copy of the North Carolina Administrative
11 Code or North Carolina Register may obtain a copy by paying a fee set by the
12 Codifier of Rules. The Codifier must set separate fees for the North Carolina
13 Register and the North Carolina Administrative Code in amounts that cover
14 publication, copying, and mailing costs. All monies received under this section must
15 be credited to the General Fund."

16 Sec. 2. G.S. 150B-1 reads as rewritten:

17 **"§ 150B-1. Policy and scope.**

18 (a) Purpose.-- The policy of the State is that the three powers of government,
19 legislative, executive, and judicial, are, and should remain, separate. The intent of this
20 Chapter is to prevent the commingling of those powers in any administrative agency
21 and to This Chapter establishes a uniform system of administrative rule-making and
22 adjudicatory procedures for agencies. The procedures ensure that the functions of
23 rule making, investigation, advocacy, and adjudication are not all performed by the
24 same person in the administrative process.

25 (b) Rights.-- The purpose of this Chapter is to establish as nearly as possible a
26 uniform system of administrative rule making and adjudicatory procedures for State
27 agencies. This Chapter confers procedural rights but does not confer substantive
28 rights.

29 (c) Full Exemptions.-- This Chapter shall apply to every agency, as defined in G.S.
30 150B-2(1), except to the extent and in the particulars that any statute, including
31 subsection (d) of this section, makes specific provisions to the contrary. applies to
32 every agency except:

- 33 (1) The North Carolina National Guard in exercising its court-martial
34 jurisdiction.
35 (2) The Department of Human Resources in exercising its authority
36 over the Camp Butner reservation granted in Article 6 of Chapter
37 122C of the General Statutes.
38 (3) The Utilities Commission.
39 (4) The Industrial Commission.
40 (5) The Employment Security Commission.

41 (d) Exemptions From Rule-making.-- Article 2A of this Chapter does not apply to
42 the following:

- 43 (1) The Commission.

1 (2) The North Carolina Low-Level Radioactive Waste Management
2 Authority in administering the provisions of G.S. 104G-10 and
3 G.S. 104G-11.

4 (3) The North Carolina Hazardous Waste Management Commission in
5 administering the provisions of G.S. 130B-13 and G.S. 130B-14.

6 (4) The Department of Revenue.

7 (5) The Department of Correction.

8 (6) The Department of Transportation.

9 (e) Exemptions From Contested Case Provisions.-- The contested case provisions
10 of this Chapter do not apply to the following:

11 (1) The Department of Human Resources and the Department of
12 Environmental, Health, and Natural Resources in complying with
13 the procedural safeguards mandated by Section 680 of Part H of
14 Public law 99-457 as amended (Education of the Handicapped Act
15 Amendments of 1986).

16 (2) The Governor's Waste Management Board in administering the
17 provisions of G.S. 104E-6.2 and G.S. 130A-293.

18 (3) The North Carolina Low-Level Radioactive Waste Management
19 Authority in administering the provisions of G.S. 104G-9, 104G-10,
20 and 104G-11.

21 (4) The North Carolina Hazardous Waste Management Commission in
22 administering the provisions of G.S. 130B-11, 130B-13, and
23 130B-14.

24 (5) Hearings required pursuant to the Rehabilitation Act of 1973,
25 (Public Law 93-122), as amended and federal regulations
26 promulgated thereunder. G.S. 150B-51(a) is considered a
27 contested case hearing provision that does not apply to these
28 hearings.

29 (6) The Department of Revenue.

30 (7) The Department of Correction.

31 (8) The Department of Transportation, except as provided in G.S. 136-
32 29.

33 (9) The Occupational Safety and Health Review Board in all actions
34 that do not involve agricultural employers.

35 (f) Exemption From All But Judicial Review.-- No Article in this Chapter except
36 Article 4 applies to The University of North Carolina.

37 ~~(1) The following are specifically exempted from the provisions of this~~
38 ~~Chapter:~~

39 a. ~~The Administrative Rules Review Commission;~~

40 b. ~~The Employment Security Commission;~~

41 c. ~~The Industrial Commission;~~

42 d. ~~The Occupational Safety and Health Review Board in all~~
43 ~~actions that do not involve agricultural employers; and~~

44 e. ~~The Utilities Commission.~~

- 1 ~~(2) The North Carolina National Guard is exempt from the provisions~~
2 ~~of this Chapter in exercising its court-martial jurisdiction.~~
- 3 ~~(3) The Department of Human Resources is exempt from this Chapter~~
4 ~~in exercising its authority over the Camp Butner reservation~~
5 ~~granted in Article 6 of Chapter 122C of the General Statutes. The~~
6 ~~Department of Human Resources and the Department of~~
7 ~~Environmental, Health, and Natural Resources are exempt from~~
8 ~~Article 3 of this Chapter in complying with the procedural~~
9 ~~safeguards mandated by the Section 680 of Part H of P.L. 99-457 as~~
10 ~~amended (Education of the Handicapped Act Amendments of~~
11 ~~1986).~~
- 12 ~~(4) The Department of Correction is exempt from the provisions of~~
13 ~~this Chapter, except for Article 5 of this Chapter and G.S. 150B-13~~
14 ~~which shall apply.~~
- 15 ~~(5) Articles 2 and 3 of this Chapter shall not apply to the Department~~
16 ~~of Revenue.~~
- 17 ~~(6) Except as provided in Chapter 136 of the General Statutes,~~
18 ~~Articles 2 and 3 of this Chapter do not apply to the Department of~~
19 ~~Transportation.~~
- 20 ~~(7) Article 4 of this Chapter, governing judicial review of final~~
21 ~~administrative decisions, shall apply to The University of North~~
22 ~~Carolina and its constituent or affiliated boards, agencies, and~~
23 ~~institutions, but The University of North Carolina and its~~
24 ~~constituent or affiliated boards, agencies, and institutions are~~
25 ~~specifically exempted from the remaining provisions of this~~
26 ~~Chapter.~~
- 27 ~~(8) Article 4 of this Chapter shall not apply to the State Banking~~
28 ~~Commission, the Commissioner of Banks, the Savings Institutions~~
29 ~~Division of the Department of Economic and Community~~
30 ~~Development, and the Credit Union Division of the Department of~~
31 ~~Economic and Community Development.~~
- 32 ~~(9) Article 3 of this Chapter shall not apply to agencies governed by~~
33 ~~the provisions of Article 3A of this Chapter, as set out in G.S.~~
34 ~~150B-38(a).~~
- 35 ~~(10) Articles 3 and 3A of this Chapter shall not apply to the Governor's~~
36 ~~Waste Management Board in administering the provisions of G.S.~~
37 ~~104E-6.2 and G.S. 130A-293.~~
- 38 ~~(11) Article 2 of this Chapter shall not apply to the North Carolina~~
39 ~~Low-Level Radioactive Waste Management Authority in~~
40 ~~administering the provisions of G.S. 104G-10 and G.S. 104G-11.~~
41 ~~Articles 3 and 3A of this Chapter shall not apply to the North~~
42 ~~Carolina Low-Level Radioactive Waste Management Authority in~~
43 ~~administering the provisions of G.S. 104G-9, 104G-10, and~~
44 ~~104G-11.~~

1 - (12) ~~Article 2 of this Chapter shall not apply to the North Carolina~~
2 ~~Hazardous Waste Management Commission in administering the~~
3 ~~provisions of G.S. 130B-13 and G.S. 130B-14. Articles 3 and 3A of~~
4 ~~this Chapter shall not apply to the North Carolina Hazardous~~
5 ~~Waste Management Commission in administering the provisions of~~
6 ~~G.S. 130B-11, 130B-13, and 130B-14.~~

7 (13) ~~Article 3 and G.S. 150B-51(a) of this Chapter shall not apply to~~
8 ~~hearings required pursuant to the Rehabilitation Act of 1973,~~
9 ~~(Public Law 93-122), as amended and federal regulations~~
10 ~~promulgated thereunder."~~

11 Sec. 3. G.S. 150B-2 reads as rewritten:

12 **"§ 150B-2. Definitions.**

13 As used in this Chapter,

14 (01) 'Administrative law judge' means a person appointed under G.S.
15 7A-752, 7A-753, or 7A-757.

16 (1) 'Agency' means ~~any agency, institution, board, commission,~~
17 ~~bureau, department, division, council, member of the Council of~~
18 ~~State, or officer of the State government of the State of North~~
19 ~~Carolina but does not include any agency in the legislative or~~
20 ~~judicial branch of the State government; and does not include~~
21 ~~counties, cities, towns, villages, other municipal corporations or~~
22 ~~political subdivisions of the State or any agencies of such~~
23 ~~subdivisions, or local boards of education, other local public~~
24 ~~districts, units or bodies of any kind, or private corporations~~
25 ~~created by act of the General Assembly. an agency or an officer in~~
26 ~~the executive branch of the government of this State and includes~~
27 ~~the Council of State, the Governor's Office, a board, a~~
28 ~~commission, a department, a division, a council, and any other unit~~
29 ~~of government in the executive branch. A local unit of~~
30 ~~government is not an agency.~~

31 (1a) 'Adopt' means to take final action to create, amend, or repeal a
32 rule.

33 (1b) 'Codifier of Rules' means the Chief Administrative Law Judge of
34 the Office of Administrative Hearings or a designated
35 representative of the Chief Administrative Law Judge.

36 (1c) 'Commission' means the Rules Review Commission.

37 (2) 'Contested case' means an administrative proceeding pursuant to
38 this Chapter to resolve a dispute between an agency and another
39 person that involves the person's rights, duties, or privileges,
40 including licensing or the levy of a monetary penalty. 'Contested
41 case' does not include rule-making, declaratory rulings, or the
42 award or denial of a scholarship or grant.

43 (2a) ~~'Effective' means that a valid rule has been filed as required by~~
44 ~~G.S. 150B-59 and, if applicable, that the time specified in that~~

1 ~~section has elapsed. A rule that is effective is enforceable to the~~
2 ~~extent permitted by law.~~

3 (2b) 'Hearing officer' means a person or group of persons designated by
4 an agency that is subject to Article 3A of this Chapter to preside in
5 a contested case hearing conducted under that Article.

6 (2c) 'Law' means an enactment of the General Assembly.

7 (3) 'License' means any certificate, permit or other evidence, by
8 whatever name called, of a right or privilege to engage in any
9 activity, except licenses issued under Chapter 20 and Subchapter I
10 of Chapter 105 of the General Statutes and occupational licenses.

11 (4) 'Licensing' means any administrative action issuing, failing to issue,
12 suspending, or revoking a license or occupational license.
13 'Licensing' does not include controversies over whether an
14 examination was fair or whether the applicant passed the
15 examination.

16 (4a) 'Occupational license' means any certificate, permit, or other
17 evidence, by whatever name called, of a right of privilege to
18 engage in a profession, occupation, or field of endeavor that is
19 issued by an occupational licensing agency.

20 (4b) 'Occupational licensing agency' means any board, commission,
21 committee or other agency of the State of North Carolina which is
22 established for the primary purpose of regulating the entry of
23 persons into, and/or the conduct of persons within a particular
24 profession, occupation or field of endeavor, and which is
25 authorized to issue and revoke licenses. 'Occupational licensing
26 agency' does not include State agencies or departments which may
27 as only a part of their regular function issue permits or licenses.

28 (5) 'Party' means any person or agency named or admitted as a party
29 or properly seeking as of right to be admitted as a party and
30 includes the agency as appropriate. This subdivision does not
31 permit an agency that makes a final decision, or an officer or
32 employee of the agency, to petition for initial judicial review of
33 that decision.

34 (6) 'Person aggrieved' means any person or group of persons of
35 common interest directly or indirectly affected substantially in his
36 or its person, property, or employment by an administrative
37 decision.

38 (7) 'Person' means any natural person, partnership, corporation, body
39 politic and any unincorporated association, organization, or society
40 which may sue or be sued under a common name.

41 (8) 'Residence' means domicile or principal place of business.

42 (8a) 'Rule' means any agency regulation, ~~standard~~ standard, or
43 statement of general applicability that implements or interprets
44 ~~laws enacted by~~ an enactment of the General Assembly or

1 Congress or ~~regulations promulgated~~ a regulation adopted by a
2 federal agency or that describes the procedure or practice
3 requirements of an agency. ~~any agency not inconsistent with laws~~
4 ~~enacted by the General Assembly~~. The term includes the
5 amendment or repeal of a prior rule. The term does not include
6 the following:

- 7 a. Statements concerning only the internal management of an
8 agency or group of agencies within the same principal office
9 or department enumerated in G.S. 143-11 or 143B-6,
10 including policies and procedures manuals, if ~~such a~~ the
11 statement does not directly or substantially affect the
12 procedural or substantive rights or duties of a person
13 ~~persons~~ not employed by the agency or group of agencies.
- 14 b. Budgets and budget policies and procedures issued by the
15 Director of the Budget, by the head of a department, as
16 defined by G.S. 143A-2 or G.S. 143B-3, by an occupational
17 licensing board, as defined by G.S. 93B-1, or by the State
18 Board of Elections.
- 19 c. Nonbinding interpretative statements within the delegated
20 authority of ~~the~~ an agency that merely define, ~~interpret~~
21 interpret, or explain the meaning of a statute or rule. ~~other~~
22 ~~provision of law or precedent~~.
- 23 d. A form, the contents or substantive requirements of which
24 are prescribed by rule or statute. ~~statute or the instructions~~
25 ~~for the execution or use of the form~~.
- 26 e. Statements of agency policy made in the context of another
27 proceeding, including:
28 1. Declaratory rulings under ~~G.S. 150B-17~~; G.S. 150B-4.
29 2. Orders establishing or fixing rates or tariffs.
- 30 f. ~~Statements of agency policy, provided that the agency policy~~
31 ~~is not inconsistent with any law enacted by the General~~
32 ~~Assembly~~, Instructions, communicated to the public by the
33 use of signs or symbols, concerning the use of public roads,
34 bridges, or facilities, concerning:
35 1. ~~The use or creation of public roads or bridges;~~
36 2. ~~The boundaries of public facilities and times when~~
37 ~~public facilities are open to the public; or~~
38 3. ~~Safety in use of public facilities.~~
- 39 g. Statements that set forth criteria or guidelines to be used by
40 the staff of an agency in performing audits, investigations, or
41 inspections; in settling financial disputes or negotiating
42 financial arrangements; or in the defense, prosecution, or
43 settlement of ~~eases~~; cases.

1 h. Scientific, architectural, or engineering standards, forms, or
2 procedures.

3 i. Job classification standards, job qualifications, and salaries
4 established for positions under the jurisdiction of the State
5 Personnel Commission.

6 (8b) 'Substantial evidence' means relevant evidence a reasonable mind
7 might accept as adequate to support a conclusion.

8 ~~(9) 'Valid' means that the rule has been adopted pursuant to the~~
9 ~~procedure required by law. A valid rule is unenforceable until it~~
10 ~~becomes effective."~~

11 Sec. 4. G.S. 150B-17 is recodified as G.S. 150B-4 in Article 1 of Chapter
12 150B of the General Statutes.

13 Sec. 5. G.S. 12-3.1, Article 2 of Chapter 150B of the General Statutes, as
14 amended by this act, Article 5 of Chapter 150B of the General Statutes, G.S. 143B-
15 30, and G.S. 143B-30.3 are repealed.

16 Sec. 6. G.S. 84-21 reads as rewritten:

17 "**§ 84-21. Organization of council; publication of rules, regulations and bylaws.**

18 Upon receiving notification of the election of a councilor for each judicial district,
19 or, if such notification shall not have been received from all said districts, within 120
20 days after this Article shall have gone into effect, the clerk of the Supreme Court of
21 North Carolina shall call a meeting of the councilors of whose election he shall have
22 been notified, to be held in the City of Raleigh not less than 20 days nor more than
23 30 days after the date of said call; and at the meeting so held the councilors attending
24 the same shall proceed to organize the council by electing officers, taking appropriate
25 steps toward the adoption of rules and regulations, electing councilors for judicial
26 districts which have failed to elect them, and taking such other action as they may
27 deem to be in furtherance of this Article. The regular term of all officers shall be one
28 year, but those first elected shall serve until January 1, 1935. The council shall be the
29 judge of the election and qualifications of its own members. When the council shall
30 have been fully organized and shall have adopted such rules, regulations and bylaws,
31 not inconsistent with this Article, as it shall deem necessary or expedient for the
32 discharge of its duties, the secretary-treasurer shall file with the clerk of the Supreme
33 Court of North Carolina a certificate, to be called the 'certificate of organization,'
34 showing the officers and members of the council, with the judicial districts which the
35 members respectively represent, and their post-office addresses, and the rules,
36 regulations and bylaws adopted by it; and thereupon the Chief Justice of the Supreme
37 Court of North Carolina, or any judge thereof, if the court be then in vacation, shall
38 examine the said certificate and, if of opinion that the requirements of this Article
39 have been complied with, shall cause the said certificate to be spread upon the
40 minutes of the court; but if of opinion that the requirements of this Article have not
41 been complied with, shall return the said certificate to the secretary-treasurer with a
42 statement showing in what respects the provisions of this Article have not been
43 complied with; and the said certificate shall not be again presented to the Chief
44 Justice of the Supreme Court or any judge thereof, until any such defects in the

1 organization of the council shall have been corrected, at which time a new certificate
2 of organization shall be presented and the same course taken as hereinabove
3 provided, and so on until a correct certificate showing the proper organization of the
4 council shall have been presented, and the organization of the council accordingly
5 completed. Upon (a) the entry of an order upon the minutes of the court that the
6 requirements of this Article have been complied with, or (b) if for any reason the
7 Chief Justice or judge should not act thereon within 30 days, then, after the lapse of
8 30 days from the presentation to the Chief Justice or judge, as the case may be, of
9 any certificate of organization hereinbefore required to be presented by the
10 secretary-treasurer, without either the entry of an order or the return of said
11 certificate with a statement showing the respects in which this Article has not been
12 complied with, the organization of the council shall be deemed to be complete, and it
13 shall be vested with the powers herein set forth; and the certificate of organization
14 shall thereupon forthwith be spread upon the minutes of the court. A copy of the
15 certificate of organization, as spread upon the minutes of the court, shall be published
16 in the next ensuing volume of the North Carolina ~~Reports~~ Reports and in the North
17 Carolina Administrative Code. The rules and regulations set forth in the certificate of
18 organization, and all other rules and regulations which may be adopted by the
19 council under this Article, may be amended by the council from time to time in any
20 manner not inconsistent with this Article. Copies of all such rules and regulations
21 adopted subsequently to the filing of the certificate of organization, and of all
22 amendments so made by the council, shall be certified to the Chief Justice of the
23 Supreme Court of North Carolina, entered by it upon its minutes, and published in
24 the next ensuing number of the North Carolina ~~Reports~~ Reports and in the North
25 Carolina Administrative Code: Provided, that the court may decline to have so
26 entered upon its minutes any of such rules, regulations and amendments which in the
27 opinion of the Chief Justice are inconsistent with this Article."

28 Sec. 7. G.S. 95-131 reads as rewritten:

29 "**§ 95-131. Development and promulgation of standards; adoption of federal standards**
30 **and regulations.**

31 (a) All occupational safety and health standards promulgated under the federal act
32 by the Secretary, and any modifications, revision, amendments or revocations in
33 accordance with the authority conferred by the federal act or any other federal act or
34 agency relating to safety and health and adopted by the Secretary, shall be adopted as
35 the rules of the Commissioner of this State unless the Commissioner ~~shall promulgate~~
36 decides to adopt an alternative State rule ~~or standard~~ as effective as the federal
37 requirement and providing safe and healthful employment in places of employment
38 as required by the federal act and standards and regulations heretofore referred to
39 and as provided by the Occupational Safety and Health Act of 1970. ~~All standards~~
40 ~~and rules promulgated under the federal act by the Secretary, and any modifications,~~
41 ~~revisions, or revocations in accordance with the authority conferred by the federal~~
42 ~~act, or any other federal act or agency relating to safety and health and adopted by~~
43 ~~the Secretary, shall become effective upon the date the same are filed by the~~
44 ~~Commissioner in the Office of Administrative Hearings in accordance with G.S.~~

1 ~~150B-59. Chapter 150B of the General Statutes governs the adoption of rules by the~~
2 ~~Commissioner.~~

3 ~~(b) In the event the Commissioner shall develop his own standards and regulations~~
4 ~~relating to occupational safety and health which he shall consider to be as effective~~
5 ~~and efficient as any of the federal regulations or standards, then the Commissioner~~
6 ~~may by regulation promulgate, modify, or revoke any occupational safety or health~~
7 ~~standard developed by him in the following manner:~~

8 ~~(1) Whenever the need or desirability of promulgating a regulation or~~
9 ~~standard by the Commissioner which serves the objective of this~~
10 ~~Article is indicated by information submitted in writing to the~~
11 ~~Commissioner by any interested person, employer, employee, or~~
12 ~~representative of any organization of employers or employees or~~
13 ~~upon information derived from recognized standards-producing~~
14 ~~organizations or upon the basis of information developed by the~~
15 ~~Commissioner or otherwise available to him, he shall determine~~
16 ~~the scope of issue to be covered by such standard or regulation and~~
17 ~~the method to be followed in the development of such standard or~~
18 ~~regulation. If the Commissioner finds it desirable he may request~~
19 ~~the recommendation of the Advisory Council appointed under this~~
20 ~~Article and shall provide such Advisory Council with any~~
21 ~~proposals of his own, together with all pertinent factual~~
22 ~~information developed by technical experts or otherwise available,~~
23 ~~including the result of research, demonstrations, experiments, and~~
24 ~~experience. Recommendations of the Advisory Council shall be~~
25 ~~submitted to the Commissioner within 90 days from the date of the~~
26 ~~receipt of such request or within such longer or shorter period as~~
27 ~~may be prescribed by the Commissioner, but in no event for a~~
28 ~~period which is longer than 270 days.~~

29 ~~(2) When the Commissioner wishes to promulgate a regulation or~~
30 ~~standard in this section, he shall consider any proposed revisions~~
31 ~~prior to publication of proposed standards and regulations under~~
32 ~~subdivision (3) of this subsection, and may make revisions~~
33 ~~appropriate to the effectiveness of the proposed standards and~~
34 ~~regulations.~~

35 ~~(3) The Commissioner shall, following the review provided for in~~
36 ~~subdivision (2) above, publish a notice that he intends to issue a~~
37 ~~standard or regulation modifying or revoking an occupational~~
38 ~~safety or health standard or regulation in one newspaper of general~~
39 ~~circulation in Asheville, Charlotte, Durham, Greensboro, Raleigh,~~
40 ~~Wilmington and Winston-Salem, and shall afford interested persons~~
41 ~~a period of 30 days after publication to submit written data or~~
42 ~~comments. The notice shall describe the content of the proposed~~
43 ~~regulation and shall state where copies of the proposed rule,~~
44 ~~regulation or standard may be obtained.~~

- 1 (4) ~~On or before the last day of the period provided for the submission~~
2 ~~of written data or comment under subdivision (3) above, any~~
3 ~~interested person may file with the Commissioner written~~
4 ~~objections to the proposed regulation, rule or standard, stating the~~
5 ~~grounds therefor and requesting a public hearing on such~~
6 ~~objections. Within 30 days after the last day for filing such~~
7 ~~objections, the Commissioner shall issue a call for a public hearing~~
8 ~~on the proposed occupational safety or health rule, regulation or~~
9 ~~standard to which such objections have been filed. The notice of~~
10 ~~hearing shall be published in one newspaper of general circulation~~
11 ~~in Asheville, Charlotte, Durham, Greensboro, Raleigh, Wilmington~~
12 ~~and Winston-Salem, 30 days prior to the hearing. The notice shall~~
13 ~~include the date, time, and place of the hearing and shall indicate~~
14 ~~concisely and accurately the subject matter of the proposed rule,~~
15 ~~regulation or standard to which objections have been filed. It shall~~
16 ~~also state where copies of the full text of the proposed rule,~~
17 ~~regulation or standard may be obtained.~~
- 18 (5) ~~The hearing shall be presided over by the Commissioner or any~~
19 ~~authorized agent of the Department, or he may delegate such~~
20 ~~presiding to the Director and shall provide reasonable opportunity~~
21 ~~for reception of opinions, memoranda and advice concerning such~~
22 ~~proposed regulation, rule or standard by interested persons and~~
23 ~~organizations.~~
- 24 (6) ~~Within 60 days after the expiration of the period provided for the~~
25 ~~submission of written data or comments as provided by this~~
26 ~~section, or within 60 days after the completion of any hearing held~~
27 ~~under the provision of this section, the Commissioner shall issue a~~
28 ~~regulation promulgating, modifying, or revoking such occupational~~
29 ~~safety or health standard, rule or regulation so developed by him,~~
30 ~~or make a determination that such rule, standard or regulation~~
31 ~~shall not be issued. In addition, he shall issue a statement of~~
32 ~~reasons for any changes made from the proposed regulation, rule~~
33 ~~or standard, or reasons why no regulation, rule or standard was~~
34 ~~issued. Such regulation, rule or standard may contain a provision~~
35 ~~delaying its effective date for such period (not in excess of 90 days)~~
36 ~~as the Commissioner determines may be necessary to insure that~~
37 ~~affected employers and employees will be informed of the~~
38 ~~existence of the rule, regulation or standard and of its terms and~~
39 ~~that employers affected are given an opportunity to familiarize~~
40 ~~themselves and their employees with the existence of the~~
41 ~~requirements of the rule, regulation or standard. Notice of such~~
42 ~~promulgation, modification or revocation, shall be published in the~~
43 ~~same manner as heretofore provided in this section and as related~~
44 ~~to the publication of proposed rules, regulations and standards.~~

- 1 Copies of the Commissioner's ruling shall be made available
2 without cost to reasonably interested parties.
- 3 (7) ~~Upon adoption by the enactment of this Article of the occupational
4 safety or health standards, rules or regulations, promulgated under
5 the federal act by the Secretary, and modifications, revisions, or
6 revocations in accordance with the authority conferred by the
7 federal act or any other federal act or agency relating to safety and
8 health adopted by the Secretary, such rules, regulations and
9 standards may be issued and promulgated without meeting the
10 requirements of publication of proposed regulations, rules or
11 standards and without meeting the requirements of hearings as
12 provided in this section. Notice published in the federal register,
13 with reference to proposed change of standards, shall be deemed to
14 be notice to employers and employees with regard to that change.
15 Hearings and the findings of the Secretary of Labor with reference
16 to the proposed change of standards, shall be substituted for the
17 hearing and findings of the Commissioner.~~
- 18 ~~(e)~~ (1) ~~The Commissioner shall provide, without regard to the
19 aforementioned subdivision in this section, for an emergency
20 temporary standard to take immediate effect upon publication of
21 such emergency temporary standard in one newspaper of general
22 circulation in Asheville, Charlotte, Durham, Greensboro, Raleigh,
23 Wilmington and Winston-Salem if he determines (i) that employees
24 are exposed to grave danger from exposure to substances or agents
25 determined to be toxic or physically harmful or from new hazards,
26 and (ii) that such emergency standard is necessary to protect
27 employees from such danger.~~
- 28 (2) ~~Emergency standards may cover issues not dealt with by statutes or
29 regulations in existence and may displace standards heretofore
30 promulgated.~~
- 31 (3) ~~Any such emergency temporary standard shall be effective until
32 superseded by a standard promulgated in accordance with the
33 procedures prescribed in subdivision (4) of this subsection.~~
- 34 (4) ~~Upon publication of such emergency temporary standard, the
35 Commissioner shall commence a proceeding in accordance with
36 G.S. 95-131(e) of this Article, and the emergency standard as
37 published shall also serve as a proposed regulation for the
38 proceeding. He shall thereupon promulgate a standard under this
39 subdivision no later than six months after publication of the
40 emergency standard as provided in subdivision (1) of this
41 subsection.~~
- 42 (d) (1) ~~Regulations issued under subsections (b) and (e) of Rules adopted
43 under this section shall provide insofar as possible the highest
44 degree of safety and health protection for employees; other~~

1 considerations shall be the latest available scientific data in the
2 field, the feasibility of the standard, and experience gained under
3 this and other health and safety laws. Whenever practical the
4 standards ~~promulgated~~ established in a rule shall be expressed in
5 terms of objective criteria and of the performance desired. In
6 ~~promulgating~~ establishing standards dealing with toxic materials or
7 harmful physical agents, the Commissioner, after consultation and
8 recommendations of the Department of Human Resources, shall set
9 a standard which most adequately assures, to the extent possible,
10 on the basis of the most available evidence that no employee will
11 suffer material impairment of health or functional capacity even if
12 such employee has regular exposure to the hazard dealt with by
13 such standard for the period of his working life.

14 (2) ~~Upon adoption of this Article, all rules and procedures set forth in~~
15 ~~section 6(b)(7) of the federal act will be hereinafter adopted and~~
16 ~~applied.~~

17 (e) ~~The Commissioner shall not develop or promulgate~~ may not adopt State
18 standards, for products distributed or used in interstate commerce, which are
19 different from federal standards for such products unless the ~~promulgation~~ adoption
20 of such State standard, or standards, ~~are~~ is required by compelling local conditions
21 and ~~do~~ does not unduly burden interstate commerce.

22 ~~-(f) Notwithstanding any other provision of this section, in the event the~~
23 ~~Commissioner shall develop any rule, regulation, scope, or standard for agricultural~~
24 ~~employers which differs from the federal regulations or standards, he shall~~
25 ~~promulgate these rules, standards and regulations pursuant to Articles 2 and 5 of~~
26 ~~Chapter 150B and Part 3 of Article 1 of Chapter 143B.~~

27 (g) Any rule, regulation, scope, or standard for agricultural employers adopted or
28 promulgated prior to July 12, 1988, that differs from the federal rule, regulation,
29 scope, or standard is repealed effective September 1, 1989, unless readopted pursuant
30 to Chapter 150B of the General Statutes."

31 Sec. 8. G.S. 143B-14(b) reads as rewritten:

32 "(b) Except as otherwise provided ~~in the Executive Organization Act of 1973, in~~
33 ~~G.S. 120-30.28, or in G.S. 150B-11(3);~~ by law, the powers, duties, and functions of a
34 commission (including but not limited to rule making, regulation, licensing, and
35 ~~promulgation of rules, rates, regulations, and standards, and the rendering of findings,~~
36 ~~orders, and adjudications)~~ shall not be ~~are not~~ subject to the approval, review, or
37 control of the head of the department or of the Governor. ~~Provided, however, that~~
38 ~~the provisions of this subsection shall not apply to the review of rules by the~~
39 ~~Governor's Administrative Rules Review Commission."~~

40 Sec. 9. G.S. 143B-18 and 143B-20 are repealed.

41 Sec. 10. The catchline to G.S. 143B-30.1 and G.S. 143B-30.1(a) read as
42 rewritten:

43 "**§ 143B-30.1. Administrative Rules Review Commission created.**

1 (a) The Administrative Rules Review Commission is created. The Commission
2 shall consist of eight members to be appointed by the General Assembly, four upon
3 the recommendation of the President of the Senate, and four upon the
4 recommendation of the Speaker of the House of Representatives. These appointments
5 shall be made in accordance with G.S. 120-121, and vacancies in these appointments
6 shall be filled in accordance with G.S. 120-122. Except as provided in subsection (b)
7 of this section, all appointees shall serve two-year terms."

8 Sec. 11. G.S. 143B-30.2 reads as rewritten:

9 **"§ 143B-30.2. Review of rules. Purpose of Commission.**

10 The Rules Review Commission reviews administrative rules in accordance with
11 Chapter 150B of the General Statutes.

12 ~~(a) Rules adopted by an agency on or after September 1, 1986, shall be submitted~~
13 ~~to the Administrative Rules Review Commission, which shall review the rule to~~
14 ~~determine whether it:~~

15 ~~(1) Is within the authority delegated to the agency by the General Assembly;~~

16 ~~(2) Is clear and unambiguous;~~

17 ~~(3) Is reasonably necessary to enable the administrative agency to perform a~~
18 ~~function assigned to it by statute or to enable or facilitate the implementation of a~~
19 ~~program or policy in aid of which the rule was adopted.~~

20 ~~Any rule filed by the 20th of a month shall be reviewed by the Commission by the~~
21 ~~last day of the next calendar month. Any rule filed after the 20th of a month shall be~~
22 ~~reviewed by the Commission by the last day of the second subsequent calendar~~
23 ~~month. The Commission may extend the time for review of a rule by a period of up~~
24 ~~to 70 days to obtain additional information on the rule. The Commission shall file~~
25 ~~notice of the extension of time for review of a rule with the agency and the Director~~
26 ~~of the Office of Administrative Hearings. A rule may not be presented for filing with~~
27 ~~the Director of the Office of Administrative Hearings under G.S. 150B-59 unless the~~
28 ~~rule has been reviewed by the Commission as provided in this section.~~

29 ~~(b) If the Commission reviews a rule and determines that it is within the authority~~
30 ~~delegated to the agency, is clear and unambiguous, and is reasonably necessary, the~~
31 ~~Commission shall note its approval, notify the agency, and file the rule with the~~
32 ~~Director of the Office of Administrative Hearings under G.S. 150B-59, and the rule~~
33 ~~shall become effective as provided in that section.~~

34 ~~(c) If the Commission finds that an agency did not act within the authority~~
35 ~~delegated to it in promulgating a rule or a part of a rule, or that a rule is not clear~~
36 ~~and unambiguous, or that a rule is unnecessary, the Commission shall object and~~
37 ~~delay the filing of the rule or part of the rule under G.S. 150B-59 for a period not to~~
38 ~~exceed 90 days. The Commission shall send to the agency, the Governor, the~~
39 ~~President of the Senate, the Speaker of the House of Representatives, and the~~
40 ~~Director of the Office of Administrative Hearings, a written report of the objection~~
41 ~~and delay of the rule or its part and the reasons for the delay. An agency may not~~
42 ~~present a rule or part of a rule that has been delayed to the Director of the Office of~~
43 ~~Administrative Hearings for filing under G.S. 150B-59, and a rule or its part that is~~
44 ~~delayed is not "effective," as defined in G.S. 150B-2(2a).~~

~~(d) Within 30 days after receipt of the Commission's written report as authorized by (e), the agency shall either (1) revise the rule to remove the cause of the objections of the Commission and return the revised rule to the Commission or (2) return the rule to the Commission without change with the Commission's objections attached; provided, however, that in the case of a board, committee, council, or commission the response is due within 30 days after receipt of the Commission's written report or within 10 days following the next regularly scheduled meeting of the board, committee, council, or commission, whichever time period is greater. The Commission shall determine whether a revision removes its objections to the rule.~~

~~(e) If the Commission determines that a revision of a rule has removed the Commission's objections, the Commission shall note its approval and return the rule to the agency. The agency may then file the rule with the Director of the Office of Administrative Hearings under G.S. 150B-59, and the rule shall become effective as provided in that section.~~

~~(f) Regardless of whether the agency returns the rule to the Commission without change instead of revising the rule to remove the Commission's objections or whether the Commission determines that a revision of a rule has not removed its objections, the Commission shall note its review of and objection to the rule once 90 days have passed since the Commission objected and delayed the filing of the rule or part of the rule pursuant to G.S. 143B-30.2(e) and shall return the rule to the agency. The agency may then file the rule with the Director of the Office of Administrative Hearings under G.S. 150B-59, and the rule shall become effective as provided in that section. If the agency did not remove the Commission's objections to the rule or part of the rule, the Commission may send to the President of the Senate and the Speaker of the House of Representatives a written report of its objections to the rule. Thereafter, if the General Assembly enacts legislation disapproving the rule, the rule shall no longer be effective.~~

~~The Legislative Services Officer shall send a copy of any law disapproving a rule to the agency and the Director of the Office of Administrative Hearings as soon as a copy is available.~~

~~(g) While the filing of a rule or its part is delayed, the agency that promulgated it may not adopt another rule, including a temporary rule, that has substantially identical provisions to those for which the Commission delayed the filing of the original rule or part of a rule.~~

~~(h) The filing of an amendment to a rule places the entire rule before the Commission for its review.~~

~~(i) Rules adopted in accordance with the procedure in G.S. 150B-13 shall be reviewed by the Commission and are subject to objection as provided in (e).~~

~~The Commission shall review the reasons given for the adoption of a temporary rule and may object to the rule due to the agency's failure to make the finding required by G.S. 150B-13. "~~

~~Sec. 12. G.S. 120-30.48 reads as rewritten:~~

~~"§ 120-30.48. Fiscal impact of administrative actions: rules.~~

1 ~~(a) An agency subject to Article 2 of Chapter 150B of the General Statutes shall~~
2 ~~file a fiscal note for a proposed new rule, or a proposed amendment or repeal of an~~
3 ~~existing rule, that can affect the expenditures or revenues of a unit of local~~
4 ~~government. The fiscal note shall be filed with the Fiscal Research Division, the~~
5 ~~Office of State Budget and Management, the North Carolina Association of County~~
6 ~~Commissioners, and the North Carolina League of Municipalities. The fiscal note~~
7 ~~shall be filed with the entities listed no later than the date specified in G.S. 150B-11.~~

8 ~~(b) This section shall not affect any emergency rule under G.S. 150B-13: is~~
9 ~~required to prepare a fiscal note on a proposed administrative rule that affects the~~
10 ~~expenditures or revenues of a unit of local government as provided in G.S. 150B-~~
11 ~~21.4."~~

12 Sec. 13. G.S. 147-16.1 reads as rewritten:

13 **"§ 147-16.1. Publication of executive orders.**

14 ~~Executive orders of the Governor shall be filed and published as provided by~~
15 ~~Article 5 of Chapter 150B of the General Statutes. The Governor must submit~~
16 ~~Executive Orders to the Secretary of State, who must compile, index, and publish the~~
17 ~~Executive Orders. The Governor's office shall also send a copy of each executive~~
18 ~~order to the President of the Senate, to the Speaker of the House of Representatives,~~
19 ~~to the Principal Clerk of the House of Representatives and to the Principal Clerk of~~
20 ~~the Senate."~~

21 Sec. 14. G.S. 148-11 reads as rewritten:

22 **"§ 148-11. Authority to make regulations.**

23 ~~The Secretary shall adopt rules for the government of the State prison system and~~
24 ~~shall file and publish such rules in accordance with the provisions of Article 5 of~~
25 ~~Chapter 150B. In the case of temporary rules, such rules shall become effective~~
26 ~~immediately upon adoption by the Secretary and shall be filed in accordance with~~
27 ~~G.S. 150B-13 with the Codifier of Rules within two working days of adoption. The~~
28 ~~Secretary shall have such portion of these rules and regulations as pertain to~~
29 ~~enforcing discipline read to every prisoner when received in the State prison system~~
30 ~~and a printed copy of these rules and regulations shall be made available to the~~
31 ~~prisoners."~~

32 Sec. 15. Section 19 of Chapter 746 of the 1985 Session Laws reads as
33 rewritten:

34 "Sec. 19. This act is effective upon ratification, except Sections 1, 4, 5, 6, 8, 13, 14,
35 15, 16, 17, 18, and 18.1. Sections 1, 4, 8, 13, 14, 15, 16, 17, and 18 shall become
36 effective January 1, 1986. Sections 5 and 6 shall become effective 30 days from the
37 date the Supreme Court issues an advisory opinion on the constitutionality of those
38 sections unless the opinion states that those sections are unconstitutional, in which
39 event those sections shall not become effective. Section 18.1 shall become effective
40 only if the Supreme Court issues an advisory opinion that the appointment of the
41 chief hearing officer by the Chief Justice is unconstitutional and shall become
42 effective on the date that opinion is issued. ~~This act~~ All but Section 5 of this act shall
43 expire January 1, 1992, and shall not be effective on or after that date. This act shall
44 not affect contested cases commenced before January 1, 1986."

1 Sec. 16. This act becomes effective October 1, 1991. The procedures in
2 G.S. 150B, Article 2A, as set forth in this act, apply to all rules for which a notice of
3 rule-making is published in the North Carolina Register on or after that date, and to
4 all rules that do not require publication of a notice of rule-making and are adopted
5 on or after that date.

SUMMARY OF
AN ACT TO IMPROVE THE ADMINISTRATIVE RULE-MAKING PROCESS

This proposal stems from a recommendation made to the Board of Governors of the North Carolina Bar Association by the Administrative Law and Procedure Task Force created by the Bar Association. The Task Force was charged with studying "the issue of the administration of justice in the area of administrative procedure." The Task Force spent two years studying the issue and made two recommendations, one on the rule-making process and one on the contested case hearing process.

This proposal varies from the Task force recommendation in a few respects. The changes in the procedure for reviewing temporary rules and the new procedure an agency must follow when the Rules Review Commission objects to a rule were not part of the Task Force recommendation. The proposal omits the attempt at uniformity contained in the Task force recommendation. The Task Force recommended that all executive branch agencies be subject to the rule-making provisions of the Administrative Procedure Act.

The proposal changes the rule-making procedure under the Administrative Procedure Act in several significant ways. These changes are described briefly below. A detailed, section-by-section explanation follows this summary. The proposal:

- (1) Shortens the process by making permanent rules effective five business days after they are filed with the Codifier of Rules. Under current law, permanent rules become effective the first day of the second month after they are filed.
- (2) Requires an agency to hold a public hearing on a proposed rule change only if a person requests a public hearing. Under current law, an agency must always hold a public hearing on a rule even if no one attends the hearing.

- (3) Makes the process more flexible by allowing an agency to publish subject-matter notice of a proposed rule change. Under current law, an agency must publish the proposed text of a rule change.
- (4) Changes the method for reviewing temporary rules by requiring the Codifier of Rules to review an agency's statement of need for the rule, by granting persons who may be affected by the rule standing to contest the rule, and by removing temporary rules from the scope of review of the Rules Review commission. Under current law, the Rules Review Commission reviews both an agency's statement of need for a temporary rule and the substance of the rule.
- (5) Prohibits an agency from adopting a rule that is substantially different from the published text of a proposed rule. Under current law, an agency can adopt an entirely different rule from the rule that is published.
- (6) Prohibits an agency from adopting a rule that imposes a civil penalty unless the agency has specific statutory authority to do so. Current law prohibits an agency from adopting a rule that imposes a criminal penalty.
- (7) Strengthens the force of an objection by the Rules Review Commission by allowing an agency rule to which the Commission objects on the basis of a lack of statutory authority to be entered in the North Carolina Administrative Code only after the agency obtains a declaratory judgment determining that the agency did not exceed its statutory authority in adopting the rule. Under current law, an agency can enter a rule to which the Commission objects in the Code and the Codifier notes in the Code that the Commission objected to the rule.
- (8) Excludes Executive Orders of the Governor from the North Carolina Administrative Code. Currently, these

orders are published in the code with no indication of which orders have been superseded.

- (9) Includes all rules of the Occupational Safety and Health Division of the Department of Labor under the Administrative Procedure Act. Under current law, there is a separate procedure in G.S. 95-131 for the adoption of these rules.
- (10) Requires the North Carolina State Bar and the other agencies that are exempt from the rule-making provisions of the Administrative Procedure Act to publish their rules in the North Carolina Administrative Code. Under current law, the State Bar, the Utilities Commission, and the Industrial Commission are not required to publish their rules in the Code. Current law requires the Employment Security Commission to publish its rules in the Code but to date the Commission has not submitted its rules to the Codifier of Rules for inclusion in the Code.

In addition to these substantive changes, the proposal makes numerous technical and clarifying changes. Most importantly, it consolidates the rule-making provisions in Articles 2 and 5 of Chapter 150B, Article 1 of Chapter 143B, and other scattered statutes into a new Article 2A of Chapter 150B.

A BILL TO BE ENTITLED
AN ACT TO IMPROVE THE ADMINISTRATIVE RULE-MAKING PROCESS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 150B of the General Statutes is amended by adding a new Article to read:

"ARTICLE 2A.

"Rules.

"Part 1. General Provisions.

"§ 150B-18. Scope and effect.

This Article applies to an agency's exercise of its authority to adopt a rule. A rule is not valid unless it is adopted in substantial compliance with this Article.

"§ 150B-19. Restrictions on what can be adopted as a rule.

An agency may not adopt a rule that does one or more of the following:

- (1) Implements or interprets a law unless that law or another law specifically authorizes the agency to do so.
- (2) Enlarges the scope of a profession, occupation, or field of endeavor for which an occupational license is required.
- (3) Imposes criminal liability or a civil penalty for an act or omission, including the violation of a rule, unless a law specifically authorizes the agency to do so or a law declares that violation of the rule is a criminal offense or is grounds for a civil penalty.
- (4) Repeats the content of a law, a rule, or a federal regulation.
- (5) Establishes a fee or other charge for providing a service in fulfillment of a duty unless a law specifically authorizes the

Replaces the current law on rule-making in Articles 2 and 5 of Chapter 150B and Part 3 of Article 1 of Chapter 143B with a new Article 2A in Chapter 150B. The changes made by each proposed statute in the bill are described below.

Restates 150B-9(a).

Combines 150B-9 and 12-3.1.

Restates 150B-9(b).

Restates 150B-9(b).

Restates 150B-9(c) concerning crimes and expands the prohibition to include civil penalties.

Expands 150B-9(d) to include rules and restatements of a law or a federal regulation; current law prohibits only verbatim repetition of a law or federal regulation.

Restates G.S. 12-3.1 and clarifies that mailing costs are included in the cost of providing a copy of a document.

agency to do so or the fee or other charge is for one of the following:

- a. A service to a State, federal, or local governmental unit.
- b. A copy of part or all of a State publication or other document, the cost of mailing a document, or both.
- c. A transcript of a public hearing.
- d. A conference, workshop, or course.
- e. Data processing services.

- (6) Allows the agency to waive or modify a requirement set in a rule unless a rule establishes specific guidelines the agency must follow in determining whether to waive or modify the requirement.

"§ 150B-20. Petitioning an agency to adopt a rule.

(a) Petition.-- A person may petition an agency to adopt a rule by submitting to the agency a written rule-making petition requesting the adoption. A person may submit written comments with a rule-making petition. If a rule-making petition requests the agency to create or amend a rule, the person must submit the proposed text of the requested rule change and a statement of the effect of the requested rule change. Each agency must establish by rule the procedure for submitting a rule-making petition to it and the procedure the agency follows in considering a rule-making petition.

(b) Time.-- An agency must grant or deny a rule-making petition submitted to it within 30 days after the date the rule-making petition is submitted, unless the agency is a board or commission. If the agency is a board or commission, it must grant or deny a rule-making petition within 120 days after the date the rule-making petition is submitted.

(c) Action.-- If an agency denies a rule-making petition, it must send the person who submitted the petition a written statement of the reasons for denying the petition. If an agency grants a rule-making petition, it must inform the person who submitted the rule-making petition of its decision and must initiate rule-making proceedings. When an agency grants a rule-

New.

Modifies 150B-16 by:

- (1) Requiring a person who wants an agency to create or amend a rule to submit the text of the desired new rule or amendment and an explanation of the effect of the desired rule change.
- (2) Allowing an agency to indicate in the Register that rule-making proceedings are the result of a petition and whether or not the agency endorses the suggested rule change.
- (3) Deleting the requirement that a board or commission consider a petition at its next regularly scheduled meeting.
- (4) Explicitly requiring an agency to inform a petitioner of its decision on a petition.
- (5) Makes failure of an agency to grant or deny a petition within the required time a denial of the petition.

making petition requesting the creation or amendment of a rule, the notice of rule-making it publishes in the North Carolina Register may state that the agency is initiating rule-making proceedings as the result of a rule-making petition, state the name of the person who submitted the rule-making petition, set out the text of the requested rule change submitted with the rule-making petition, and state whether the agency endorses the proposed rule change.

(d) Review.-- Denial of a rule-making petition is a final agency decision and is subject to judicial review under Article 4 of this Chapter. Failure of an agency to grant or deny a rule-making petition within the time limits set in subsection (b) is a denial of the rule-making petition.

"§ 150B-21. Agency must designate rule-making coordinator.

Each agency must designate one or more rule-making coordinators to oversee the agency's rule-making functions. The coordinator must prepare notices of public hearings, coordinate access to the agency's rules, and serve as the liaison between the agency, other agencies, and the public in the rule-making process.

"Part 2. Adoption of Rules.

"§ 150B-21.1. Procedure for adopting a temporary rule.

(a) Adoption. An agency may adopt a temporary rule without prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical when it finds that adherence to the notice and hearing requirements of this Part would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

- (1) A serious and unforeseen threat to the public health, safety, or welfare.
- (2) The effective date of a recent act of the General Assembly or the United States Congress.
- (3) A recent change in federal or State budgetary policy.
- (4) A federal regulation.

Restates 150B-60(b).

Modifies the temporary rule procedures in G.S. 150B-13 as described.

Requires two signatures on a statement of need for a temporary rule adopted by a board or commission located within a principal state department. Under current law, only the Governor or the Council of State member signs; under the bill, both the chair of the board or commission and the Governor or Council of State member signs.

(5) A court order.

An agency must prepare a written statement of its findings of need for a temporary rule. The statement must be signed by the head of the agency adopting the rule and, in some circumstances, by the Governor or another member of the Council of State. The statement must be signed by the Governor if the Governor designates the head of the agency adopting the rule or the agency adopting the rule is located within a department whose secretary is appointed by the Governor. The statement must be signed by the appropriate member of the Council of State if the agency adopting the rule is located within a department headed by a member of the Council of State.

An agency must begin rule-making proceedings for a permanent rule by the day it adopts a temporary rule. An agency begins rule-making proceedings for a permanent rule by publishing in the North Carolina Register notice of its intent to adopt a permanent rule.

(b) Review.-- When an agency adopts a temporary rule it must submit the rule, the agency's written statement of its findings of need for the rule, and the notice of intent to adopt a permanent rule to the Codifier of Rules. Within one business day of the day an agency submits a temporary rule, the Codifier of Rules must review the agency's written statement of findings of need for the rule to determine whether the statement of need meets the criteria listed in subsection (a). In reviewing the statement, the Codifier of Rules may consider any information submitted by the agency or another person. If the Codifier of Rules finds that the statement meets the criteria, the Codifier of Rules must notify the head of the agency and enter the rule in the North Carolina Administrative Code.

If the Codifier of Rules finds that the statement does not meet the criteria, the Codifier of Rules must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new statement. If the agency does not provide additional findings or the Codifier of Rules again finds that the statement does not meet the

New. Under current law, the Codifier of Rules does not review an agency's statement of need for a temporary rule.

criteria, the Codifier of Rules shall return the rule to the agency. A decision on whether a proposed temporary rule does or does not meet the criteria in subsection (a) is subject to judicial review under Article 4 of this Chapter.

(c) Standing.--A person whose rights, duties, or privileges may be affected by a temporary rule adopted by an agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. The court shall determine whether the rule meets the standards in G.S. 150B-21.9 for review of a permanent rule. The court may not grant an ex parte temporary restraining order.

(d) Expiration.-- A temporary rule expires on the date specified in the rule or 180 days from the date the rule becomes effective, whichever comes first.
"§ 150B-21.2. Procedure for adopting a permanent rule.

(a) Notice.-- Before an agency adopts a permanent rule, it must publish notice of its intent to adopt a permanent rule in the North Carolina Register and as required by any other law. The notice published in the North Carolina Register must include all of the following:

- (1) Either the text of the proposed rule or a statement of the subject matter of the proposed rule-making.
- (2) A short explanation of the reason for the proposed action.
- (3) A citation to the law that gives the agency the authority to adopt the proposed rule, if the notice includes the text of the proposed rule, or a citation to the law that gives the agency the authority to adopt a rule on the subject matter of the proposed rule-making, if the notice includes only a statement of the subject matter of the proposed rule-making.
- (4) The proposed effective date of the proposed rule, if the notice includes the text of the proposed rule, or the proposed effective date

New.

Restates 150B-13.

Modifies the permanent rule procedures in G.S. 150B-12 as described.

In general, makes the permanent rule-making process more flexible and eliminates unnecessary public hearings.

Allows subject-matter notice; under current law an agency can initiate rule-making proceedings only by publishing the text of the proposed rule.

New.

Restates 150B-12(a)(1).

Restates 150B-12(a)(3).

of a rule adopted on the subject matter of the proposed rule-making, if the notice includes only a statement of the subject matter of the proposed rule-making.

- (5) The date, time, and place of any public hearing scheduled on the proposed rule or subject matter of the proposed rule-making.
- (6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (c) requires the agency to hold a public hearing on the proposed rule when requested to do so.
- (7) The period of time during which and the person to whom written comments may be submitted on the proposed rule or subject matter of the proposed rule-making.
- (8) If a fiscal note has been prepared for the proposed rule or will be prepared when a rule is proposed on the subject matter of the proposed rule-making, a statement that a copy of the fiscal note can be obtained from the agency.

(b) Mailing List.-- An agency must maintain a mailing list of persons who have requested notice of rule-making. When an agency publishes a rule-making notice in the North Carolina Register, it must mail a copy of the notice to each person on the mailing list who has requested notice of rule-making proceedings on the rule or the subject matter for rule-making described in the notice. An agency may charge an annual fee to each person on the agency's mailing list to cover copying and mailing costs.

(c) Hearing.-- An agency must hold a public hearing on a rule it proposes to adopt in two circumstances and may hold a public hearing in other circumstances. When an agency is required to hold a public hearing on a proposed rule or decides to hold a public hearing on a proposed rule when it is not required to do so, the agency must publish in the North Carolina Register a notice of the date, time, and place of the public hearing. The hearing date of a public

Recognizes that an agency need not hold a public hearing on every proposed rule change.

Requires an agency that does not schedule a public hearing on the proposed text of a rule to inform the public how to demand a public hearing on the proposed rule.

Restates current law.

Explicitly requires a rule-making notice to indicate when a fiscal note for a proposed rule adoption that affects State funds has been or will be prepared; current law requires an agency to inform the public of only fiscal notes for proposed rule adoptions that affect local funds.
New.

Shortens the minimum time period between publication of a notice of a public hearing and the public hearing from 30 days to 15 days.

hearing held after the agency publishes notice of the hearing in the North Carolina Register must be at least 15 days after the date the notice is published.

An agency must hold a public hearing on a proposed rule in the following two circumstances:

- (1) The agency publishes a statement of the subject matter of the proposed rule-making in the notice in the North Carolina Register.
- (2) The agency publishes the text of the proposed rule in the notice in the North Carolina Register and all the following apply:
 - a. The notice does not schedule a public hearing on the proposed rule.
 - b. Within 15 days after the notice is published, the agency receives a written request for a public hearing on the proposed rule.
 - c. The proposed rule is not part of a rule-making proceeding the agency initiated by publishing a statement of the subject matter of proposed rule-making.
 - d. The proposed text is not a changed version of proposed text the agency previously published in the course of rule-making proceedings but did not adopt.

(d) Text After Subject-Matter Notice.-- When an agency publishes notice of the subject matter of proposed rule-making in the North Carolina Register, it must subsequently publish in the North Carolina Register the text of the rule it proposes to adopt as a result of the public hearing and of any comments received on the subject matter. An agency may not publish the proposed text of a rule for which it published a subject-matter notice before the public hearing on the subject matter.

(e) Comments.-- An agency must accept comments on the text of a proposed rule published in the North Carolina Register for at least 15 days after the text is published or until the date of any public hearing held on the proposed rule, whichever is longer. An agency must accept comments on a statement of the

New.

Requires a public hearing on the published text of a proposed rule only when a person requests a public hearing.

New.

Shortens the minimum comment period from 30 days to 15 days.

subject matter of proposed rule-making until the public hearing on the subject matter. An agency must consider fully all written and oral comments received.

(f) Adoption.-- An agency may not adopt a rule until the time for commenting on the proposed text of the rule has elapsed. An agency may not adopt a rule that differs substantially from the text of a proposed rule published in the North Carolina Register unless the agency publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule for the time set in subsection (e).

An adopted rule differs substantially from a proposed rule if it does one or more of the following:

- (1) Affects the interests of persons who, based on the proposed text of the rule, could not reasonably have determined that the rule would affect their interests.
- (2) Addresses a subject matter or an issue that is not addressed in the proposed text of the rule.
- (3) Produces an effect that could not reasonably have been expected based on the proposed text of the rule.

(g) Explanation.-- An agency must issue a concise written statement explaining why the agency adopted a rule if, within 30 days after the agency adopts the rule, a person asks the agency to do so. The explanation must state the principal reasons for and against adopting the rule and must discuss why the agency rejected any arguments made or considerations urged against the adoption of the rule.

(h) Record.-- An agency must keep a record of a rule-making proceeding. The record must include all written comments received, a transcript or recording of any public hearing held on the rule, and any written explanation made by the agency for adopting the rule.

"§ 150B-21.3. Effective date of rules.

(a) Temporary Rule.-- A temporary rule becomes effective on the date the Codifier of Rules enters the rule in the North Carolina Administrative Code.

Restates 150B-12(e) concerning adoption before public hearing (?), establishes a test for determining when an adopted rule differs substantially from a previously published rule, and prohibits an agency from adopting a rule that differs substantially from a previously published rule.

Restates 150B-12(e).

Clarifies a rule-making record by explicitly requiring a public hearing on a proposed rule to be recorded.

Combines 150B-13 and 150B-59(a) and modifies 150B-59(a).

Same as current law.

(b) Permanent Rule.-- A permanent rule approved by the Commission becomes effective five business days after the Commission delivers the rule to the Codifier of Rules, unless the agency adopting the rule specifies a later effective date. If the agency specifies a later effective date, the rule becomes effective on that date.

A permanent rule that is not approved by the Commission because the Commission finds the rule is not clear and unambiguous or is not reasonably necessary to fulfill a duty delegated to the agency by the General Assembly becomes effective five business days after the agency adopting the rule delivers the rule to the Codifier of Rules, unless the agency adopting the rule specifies a later effective date. If the agency specifies a later effective date, the rule becomes effective on that date.

A permanent rule that is not approved by the Commission because the Commission finds the rule is not within the authority delegated to the agency by the General Assembly becomes effective five business days after the agency adopting the rule delivers to the Codifier of Rules either a court order directing the entry or a declaratory judgment determining that the rule is within the authority delegated to the agency by the General Assembly, unless the agency adopting the rule specifies a later effective date. If the agency specifies a later effective date, the rule becomes effective on that date.

(c) OSHA Standard.-- A permanent rule concerning an occupational safety and health standard that is adopted by the Occupational Safety and Health Division of the Department of Labor and is identical to a federal regulation promulgated by the Secretary of the United States Department of Labor becomes effective on the date the Division delivers the rule to the Codifier of Rules, unless the Division specifies a later effective date. If the Division specifies a later effective date, the rule becomes effective on that date.

"§ 150B-21.4. Fiscal notes on rules.

(a) State Funds.-- Before an agency publishes in the North Carolina Register the proposed text of a

Changes current law by:

- (1) Making a rule approved by ARRC or a rule to which ARRC objects because the rule is not clear or is not reasonably necessary effective five days after it is filed with the Codifier, thereby decreasing by two months the time period between ARRC approval of a permanent rule and the effective date of the rule. Under current law, a rule becomes effective the first day of the second month after it is filed with the Codifier.
- (2) Making a rule to which ARRC objects because the rule exceeds the agency's authority effective only after the agency obtains a declaratory judgment that the rule is within the statutory authority of the agency.

Same as current law, 95-131(a)

Combines 150B-11 and 120-30.48.
Modifies 150B-11 by:

permanent rule change that would require the expenditure or distribution of funds subject to the Executive Budget Act, Article 1 of Chapter 143, it must submit the text of the proposed rule change and a fiscal note on the proposed rule change to the Director of the Budget and obtain certification from the Director that the funds that would be required by the proposed rule change are available. The fiscal note must state the amount of funds that would be expended or distributed as a result of the proposed rule change and explain how the amount was computed. The Director of the Budget must certify a proposed rule change if funds are available to cover the expenditure or distribution required by the proposed rule change.

(b) Local Funds.-- Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would affect the expenditures or revenues of a unit of local government, it must submit the text of the proposed rule change and a fiscal note on the proposed rule change to the Fiscal Research Division of the General Assembly, the Office of State Budget and Management, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities. The fiscal note must state the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local government and must explain how the amount was computed.

(c) Errors.-- An erroneous fiscal note prepared in good faith does not affect the validity of a rule.

"§ 150B-21.5. Circumstances when notice and rule-making hearing not required.

(a) Amendment.-- An agency is not required to publish a notice of rule-making in the North Carolina Register or hold a public hearing when it proposes to amend a rule, without changing the substance of the rule, to do one of the following:

- (1) Reletter or renumber the rule or subparts of the rule.

- (1) Limiting the requirement to funds subject to the Executive Budget Act; current law includes all funds of occupational licensing boards.
- (2) Clarifying that the Director's function is to certify whether funds are available rather than to review the merits of the proposed rule adoption.

Same as current law.

Clarifies that errors in a fiscal note on a rule affecting State funds do not affect the validity of the rule.

Combines 150B-12(g) and (h) and 95-131(a), deletes the requirement that the Director of OAH determine whether a proposed change affects the substance, and makes other changes as described.

Modifies 150B-12(g) as described.

Same as current law.

- (2) Substitute one name for another when an organization or position is renamed.
- (3) Correct a citation in the rule to another rule or law when the citation has become inaccurate since the rule was adopted because of the repeal or renumbering of the cited rule or law.
- (4) Change information that is readily available to the public, such as an address or a telephone number.
- (5) Correct a typographical error made in entering the rule in the North Carolina Administrative Code.

- (6) Change a rule in response to a request or an objection by the Commission.

(b) Repeal.-- An agency is not required to publish a notice of rule-making in the North Carolina Register or hold a public hearing when it proposes to repeal a rule if the law under which the rule was adopted is repealed, or if the law under which the rule was adopted or the rule itself is declared unconstitutional.

(c) OSHA Standard.-- The Occupational Safety and Health Division of the Department of Labor is not required to publish a notice of rule-making in the North Carolina Register or hold a public hearing when it proposes to adopt a rule that concerns an occupational safety and health standard and is identical to a federal regulation promulgated by the Secretary of the United States Department of Labor. The Occupational Safety and Health Division is not required to submit to the Commission for review a rule for which notice and hearing is not required under this subsection.

"§ 150B-21.6. Incorporating material in a rule by reference.

An agency may incorporate the following material by reference in a rule without repeating the text of the referenced material:

Same as current law.

Same as current law.

Same as current law.

Changes 150B-61(c) by deleting the requirement that an agency publish notice and hold a public hearing to correct a typographical error if the agency did not report the error to the Codifier within 30 days after the Codifier entered the rule in the Code. New. Codifies the current practice.

Clarifies when a rule can be repealed without notice and hearing; current law is confusing.

Same as current law, 95-131(a).

Modifies 150B-14 by deleting the prohibition on adopting by reference a job application procedure or employment practice established by the State Personnel Commission and by requiring an agency to specify in a rule that incorporates material by

- (1) Another rule or part of a rule adopted by the agency.
- (2) All or part of a code, standard, or regulation adopted by another agency, the federal government, or a generally recognized organization or association.
- (3) Material adopted to meet a requirement of the federal government.

In incorporating material by reference, the agency must designate in the rule whether or not the incorporation includes subsequent amendments and editions of the referenced material. The agency can change this designation only by a subsequent rule-making proceeding. The agency must have copies of the incorporated material available for inspection and must specify in the rule both where copies of the material can be obtained and the cost on the date the rule is adopted of a copy of the material.

A statement in a rule that a rule incorporates material by reference in accordance with former G.S. 150B-14(b) is a statement that the rule does not include subsequent amendments and editions of the referenced material. A statement in a rule that a rule incorporates material by reference in accordance with former G.S. 150B-14(c) is a statement that the rule includes subsequent amendments and editions of the referenced material.

"§ 150B-21.7. Effect of transfer of duties or termination of agency on rules.

When a law that authorizes an agency to adopt a rule is repealed and another law gives the same or another agency substantially the same authority to adopt a rule, the rule remains in effect until the agency amends or repeals the rule. When a law that authorizes an agency to adopt a rule is repealed and another law does not give the same or another agency substantially the same authority to adopt a rule, a rule adopted under the repealed law is repealed as of the date the law is repealed.

reference where a person can obtain a copy of the material.

Same as current law.

Same as current law.

Same as current law.

Modifies 150B-15 by:

- (1) Requiring the Director of Fiscal Research to notify the Codifier of a rule that is automatically repealed because either the law authorizing the rule is repealed or the function of the agency addressed in the rule is abolished.
- (2) Specifying when the automatic repeal of a rule becomes effective.

When an executive order abolishes part or all of an agency and transfers a function of that agency to another agency, a rule concerning the transferred function remains in effect until the agency to which the function is transferred amends or repeals the rule. When an executive order abolishes part or all of an agency and does not transfer a function of that agency to another agency, a rule concerning a function abolished by the executive order is repealed as of the effective date of the executive order.

The Director of Fiscal Research of the General Assembly must notify the Codifier of Rules when a rule is repealed under this section. When notified of a rule repealed under this section, the Codifier of Rules must enter the repeal of the rule in the North Carolina Administrative Code.

"Part 3. Review by Commission.

"§ 150B-21.8. Review of rule by Commission.

(a) Temporary Rule.--The Commission does not review a temporary rule.

(b) Permanent Rule.-- An agency must submit a permanent rule adopted by it to the Commission before the rule can be included in the North Carolina Administrative Code. The Commission reviews a permanent rule in accordance with the standards in G.S. 150B-21.9 and follows the procedure in this Part in its review of a permanent rule.

(c) Scope.-- When the Commission reviews an amendment to a rule, it may review the entire rule that is being amended. If the Commission objects to part of a rule that is within its scope of review but is not changed by a rule amendment, the part of the rule remains in effect. If the Commission objects on the basis that the agency did not act within its statutory authority in adopting that part of the rule, the part of the rule remains in effect until the Commission obtains a declaratory judgment that the part of the rule is not within the agency's statutory authority. If the Commission objects on the basis that the rule is not clear and unambiguous or is not reasonably

Modifies 143B-30.2 as described.

Changes current law by removing both an agency's statement of need for a temporary rule and the substance of the rule from review by the Commission.

Same as current law, 143B-30.2(a).

Modifies current law, 143B-30.2(h), to allow the Commission to seek a declaratory judgment in limited circumstances.

necessary, the part of the rule remains in effect until changed by the agency. When the Commission objects to part of a rule under this subsection, the Commission must notify the Codifier of Rules and the Codifier of Rules must enter the objection in the North Carolina Administrative Code.

"§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards.-- The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to fulfill a duty delegated to the agency by the General Assembly.

The Commission may determine if a rule before it for review was adopted in accordance with Part 2 of this Article. The Commission must notify the agency that adopted the rule and the Codifier of Rules if it determines that a rule was not adopted in accordance with Part 2 of this Article.

(b) Timetable.-- The Commission must review a rule submitted to it on or before the 20th of a month by the last day of the next month. The Commission must review a rule submitted to it after the 20th of a month by the last day of the second subsequent month.

"§ 150B-21.10. Commission action on permanent rule.

At the first meeting at which a permanent rule is before the Commission for review, the Commission must take one of the following actions:

- (1) Approve the rule, if the Commission determines that the rule meets the standards for review.
- (2) Object to the rule, if the Commission determines that the rule does not meet the standards for review.
- (3) Extend the period for reviewing the rule, if the Commission determines it needs additional information on the rule to be able to decide whether the rule meets the standards for review.

Modifies 143B-30.2 as described.

Allows the Commission to determine whether an agency followed the required rule-making procedures in adopting a rule and clarifies the "reasonably necessary" standard of review.

Same as current law, 143B-30.2(a).

Allows the Commission to condition its approval of a rule on the agency's making technical changes to the rule; otherwise restates current law in 143B-30.2.

In reviewing a new rule or an amendment to an existing rule, the Commission may request an agency to make technical changes to the rule and may condition its approval of the rule on the agency's making the requested technical changes.

"§ 150B-21.11. Procedure when Commission approves permanent rule.

When the Commission approves a permanent rule, it must notify the agency that adopted the rule of the Commission's approval and must deliver the approved rule to the Codifier of Rules. The Commission must deliver an approved rule by the end of the month in which the Commission approved the rule.

"§ 150B-21.12. Procedure when Commission objects to a permanent rule.

(a) Action.-- When the Commission objects to a permanent rule, it must send the agency that adopted the rule a written statement of the objection and the reason for the objection. The agency that adopted the rule must take one of the following actions:

(1) Change the rule to satisfy the Commission's objection and submit the revised rule to the Commission.

(2) Submit a written response to the Commission indicating that the agency has decided not to change the rule.

An agency that is not a board or commission must take one of these actions within 30 days after receiving the Commission's statement of objection. A board or commission must take one of these actions within 30 days after receiving the Commission's statement of objection or within 10 days after the board or commission's next regularly scheduled meeting, whichever comes later.

When an agency changes a rule in response to an objection by the Commission, the Commission must determine whether the change satisfies the Commission's objection. If it does, the Commission must approve the rule. If it does not, the Commission must object to

Same as current law, 143B-30.2(b).

Changes current law as described.

Changes current law by:

- (1) Deleting the requirement that the Commission notify the Governor, the President of the Senate, the Speaker of the House, and the Director of the OAH when the Commission objects to a rule that the agency subsequently changes to satisfy the Commission's objection.
- (2) Allowing the Commission to notify the President of the Senate and each member of the General Assembly, rather than only the President of the Senate and the Speaker of the House, when an agency does not change a rule to satisfy the Commission's objection.
- (3) Deleting the 90-day deadline for an agency to change a rule to satisfy an objection by the Commission and the 90-day delay the Commission can invoke to hold a rule to which it has objected when the agency decides not to change the rule to satisfy the Commission's objection.
- (4) Allowing a rule to which the Commission has objected to remain under review by the Commission until the agency decides not to make further changes in the rule

the rule and send the agency a written statement of the Commission's continued objection and the reason for the continued objection.

An adopted rule to which the Commission has objected remains under review by the Commission until the agency that adopted the rule decides not to satisfy the Commission's objection and makes a written request to the Commission to return the rule to the agency. When the Commission returns a rule to which it has objected, it may send to the President of the Senate and each member of the General Assembly a report of its objection to the rule.

(b) Entry In Code.-- When the Commission returns a rule to which it has objected to the agency that adopted the rule, the Commission must notify the Codifier of Rules of its action and of the basis of the Commission's objection. An agency whose rule is returned may file the rule with the Codifier of Rules if the Commission objected to the rule because it found the rule is not clear and unambiguous or is not reasonably necessary. An agency whose rule is returned may not file the rule adoption with the Codifier of Rules if the Commission objected to the rule because it found the rule is not within the statutory authority of the agency, unless the agency obtains either a court order directing the entry or a declaratory judgment determining that the rule is within the authority delegated to the agency by the General Assembly. When the Codifier of Rules enters in the North Carolina Administrative Code a rule to which the Commission objected because the rule is not clear and unambiguous or is not reasonably necessary, the entry must reflect the Commission's objection.

"§ 150B-21.13. Procedure when Commission extends period for review of permanent rule.

When the Commission extends the period for review of a permanent rule, it must notify the agency that adopted the rule of the extension and the reason for the extension. After the Commission extends the period for review of a rule, it must decide whether to approve or object to the rule within 70 days of the extension.

"§ 150B-21.14 Public hearing on a rule.

and asks the Commission to return the rule to the agency.

- (5) Requiring the Commission to file with the Codifier a rule the Commission approves after the agency changes the rule to satisfy an initial objection by the Commission.

Changes current law by prohibiting an agency from filing a rule in the Code if the Commission objected to the rule on the basis that the rule exceeds the agency's statutory authority unless the agency obtains a declaratory judgment finding the rule valid.

Changes current law by eliminating the requirement that the Commission notify the Director of OAH when it extends the period of review for a rule.

Modifies 143B-30.3 by:

At any time before the Commission approves a rule that is before it for review or returns a rule that is before it for review to the agency that adopted the rule, the Commission may call a public hearing on the rule. On its own motion, the Commission may also call a public hearing on a rule that is not before it for review. Calling a public hearing on a rule not already before the Commission for review places the rule before the Commission for review. When the Commission decides to call a public hearing on a rule, it must give at least 15 days' notice of the hearing to the affected agency, to those who have asked to receive notice of any public hearing called on the subject matter of the rule, and to those who, as determined by the Commission, may be affected by the rule.

After a public hearing on a rule, the Commission must approve the rule or object to the rule in accordance with the standards and procedures in this Part. The Commission must make its decision of whether to approve or object to the rule within 70 days after the public hearing.

"§ 150B-21.15. Agency has burden of persuasion on rules to which Commission objects.

In a proceeding for judicial review or enforcement of a rule filed in the North Carolina Administrative Code by an agency after the Commission objected to it, the part of the rule to which the Commission objected is not presumed to meet the standards in G.S. 150B-21.9. In these proceedings, the agency filing the rule has the burden of persuading the court that the part of the rule to which the Commission objected meets the standards in G.S. 150B-21.9.

"§ 150B-21.16. Agency may seek declaratory judgment on permanent rule to which Commission objects.

(a) Action.-- When the Commission objects to a permanent rule adopted by an agency based on a lack of statutory authority and returns the rule to the agency, the agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. The court shall determine whether the agency exceeded its statutory authority in adopting the rule.

- (1) Allowing the Commission to call a public hearing on a rule that is not before it for review.
- (2) Extending the time period in which the Commission must approve or object to a rule after a public hearing on the rule from 60 days to 70 days.

New. Follows the Model State Administrative Procedure Act.

New. Prohibits an agency from filing a rule in the Code if the Commission objects to the rule on the basis of a lack of statutory authority unless the agency obtains a declaratory judgment upholding the agency's authority to adopt the rule.

(b) Record.-- Within 10 days after an agency files an action for a declaratory judgment, the agency must transmit to the court the original or a certified copy of the record in the Commission's review of the rule. The record consists of the rule, the Commission's letter of objection to the rule, and the agency's written response to the Commission's letter.

(c) Stay.-- During the pendency of an action for declaratory judgment, the Codifier of Rules cannot accept the rule for inclusion in the North Carolina Administrative Code unless the court finds it proper and determines that the agency has a substantial likelihood of prevailing in the action for a declaratory judgment.

(d) Dismissal.-- When the agency submits to the Commission additional changes to a rule that satisfy the objection while the rule is the subject of an action for a declaratory judgment, the Commission must notify the court and move to dismiss the action for declaratory judgment.

"Part 4. Publication of Code and Register.

"§ 150B-21.17. North Carolina Register.

(a) Content.-- The Codifier of Rules must publish the North Carolina Register. The North Carolina Register must be published at least two times a month and must contain the following:

- (1) Notices of proposed adoptions of rules.
- (2) Notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165.
- (3) Executive orders of the Governor.
- (4) Final decision letters from the United States Attorney General concerning changes in laws that affect voting in a jurisdiction subject to § 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H.
- (5) Decisions of the Tax Review Board.
- (6) Other information the Codifier determines helpful to the public.

(b) Form.-- When an agency publishes notice in the North Carolina Register of the proposed text of a new rule, the Codifier of Rules must publish the complete

Changes 150B-63 as described.

Modifies 150B-63(d1) by increasing the number of times the Register must be published each month from one time to two times and as follows.

Same as current law.

Same as current law.

Same as current law.

Same as current law.

New.

New.

Changes current law by:

- (1) Requiring publication of the complete text of a rule being amended unless

text of the proposed new rule. In publishing the text of a proposed new rule, the Codifier must indicate the rule is new by underlining the proposed text of the rule.

When an agency publishes notice in the North Carolina Register of the proposed text of an amendment to an existing rule, the Codifier must publish the complete text of the rule that is being amended unless the Codifier determines that publication of the complete text of the rule being amended is not necessary to enable the reader to understand the proposed amendment. In publishing the text of a proposed amendment to a rule, the Codifier must indicate deleted text with overstrikes and added text with underlines.

When an agency publishes notice in the North Carolina Register of the proposed repeal of an existing rule, the Codifier must publish the complete text of the rule the agency proposes to repeal unless the Codifier determines that publication of the complete text is impractical. In publishing the text of a rule the agency proposes to repeal, the Codifier must indicate the rule is to be repealed.

"§ 150B-21.18. North Carolina Administrative Code.

The Codifier of Rules must compile all rules into a Code known as the North Carolina Administrative Code. The format and indexing of the Code must conform as nearly as practical to the format and indexing of the North Carolina General Statutes. The Codifier must publish printed copies of the Code and may publish the Code in other forms. The Codifier must keep the Code current by publishing the Code in a loose-leaf format and periodically providing new pages to be substituted for outdated pages, by publishing the Code in volumes and periodically publishing cumulative supplements, or by another means. The Codifier must keep superseded rules.

"§ 150B-21.19. Requirements for including rule in Code.

To be acceptable for inclusion in the North Carolina Administrative Code, a rule must:

- (1) Cite the law under which the rule is adopted.

publication of the complete text is not necessary to understand the proposed amendment.

- (2) Requiring publication of a rule an agency proposes to repeal unless publication of the text is impractical.

Modifies 150B-63 by designating the name of the compilation of rules as the North Carolina Administrative Code.

Changes 150B-60 by deleting the requirement that a rule submitted for filing in the Code cite any prior rules it amends, supersedes, or supplements and makes other changes described. Same as current law.

- (2) Be signed by the head of the agency or the rule-making coordinator for the agency that adopted the rule.
- (3) Be in the physical form specified by the Codifier of Rules.
- (4) Have been reviewed by the Commission, if the rule is a permanent rule.

"§ 150B-21.20. Codifier's authority to revise form of rules.

(a) Authority.-- After consulting with the agency that adopted the rule, the Codifier of Rules may revise the form of a rule submitted for inclusion in the North Carolina Administrative Code within 10 business days after the rule is submitted to do one or more of the following:

- (1) Rearrange the order of the rule in the Code or the order of the subsections, subdivisions, or other subparts of the rule.
- (2) Provide a catchline or heading for the rule or revise the catchline or heading of the rule.
- (3) Reletter or renumber the rule or the subparts of the rule in accordance with a uniform system.
- (4) Rearrange definitions and lists.
- (5) Make other changes in arrangement or in form that do not change the substance of the rule and are necessary or desirable for a clear and orderly arrangement of the rule.

(b) Effect.-- Revision of a rule by the Codifier of Rules under this section does not affect the effective date of the rule or require the agency to readopt or resubmit the rule. When the Codifier of Rules revises the form of a rule, the Codifier of Rules must send the agency that adopted the rule a copy of the revised rule. The revised rule is the official rule.

"§ 150B-21.21. Publication of Rules of North Carolina State Bar and exempt agencies.

(a) State Bar.-- The North Carolina State Bar must submit a rule adopted or approved by it and entered in the minutes of the North Carolina Supreme Court to the

Allows a rule-making coordinator for an agency to sign a rule.

Same as current law.

Same as current law.

Modifies 150B-61 as described.

Requires the Codifier to consult with the agency before revising the form of a rule and changes the time period in which the Codifier must exercise his authority to revise a rule from 5 business days to 10 business days after a rule is filed.

(1) through (5) are same as current law.

Same as current law, 150B-60(a).

New.

Requires the rules of the State Bar to be included in the Code.

Codifier of Rules for inclusion in the North Carolina Administrative Code. The State Bar must submit a rule within 15 days after it is entered in the minutes of the Supreme Court.

(b) Exempt Agencies.-- Notwithstanding G.S. 150B-1, an agency exempted from this Article by that statute must submit a temporary or permanent rule adopted by it to the Codifier of Rules for inclusion in the North Carolina Administrative Code. An exempt agency must submit a rule to the Codifier of Rules within 15 days after it adopts the rule.

(c) Publication.-- The Codifier of Rules must compile, make available for public inspection, and publish a rule included in the North Carolina Administrative Code under this section in the same manner as other rules in the Code.

"§ 150B-21.22. Effect of inclusion in Code.

Official or judicial notice can be taken of a rule in the North Carolina Administrative Code and shall be taken when appropriate. Codification of a rule in the North Carolina Administrative Code is prima facie evidence of compliance with this Article.

"§ 150B-21.23. Rule publication manual.

The Codifier of Rules must publish a manual that sets out the form and method for publishing a notice of rule-making in the North Carolina Register and for filing a rule in the North Carolina Administrative Code.

"§ 150B-21.24. Free copies of Register and Code.

(a) Register. The Codifier of Rules must distribute copies of the North Carolina Register as soon after publication as practical, without charge, to the following:

- (1) A person who receives a free copy of the North Carolina Administrative Code.
- (2) Upon request, one copy to each member of the General Assembly.

(b) Code. The Codifier of Rules must distribute copies of the North Carolina Administrative Code as

Changes current law by requiring the rules of the Utilities Commission and the Industrial Commission to be published in the Code. The Department of Correction, Transportation, and Revenue currently publish rules in the Code because they are subject to Article 5 of 150B. The Employment Security Commission is required to publish its rules in the Code under 150B-63(g).

Directs the Codifier to include rules of State Bar and exempt agencies in the Code.

Combines 150B-59(b) and 150B-64.

Changes 150B-60(c) by:

- (1) Deleting the requirement that the Codifier maintain an agency rule-drafting section to aid in drafting rules.
- (2) Requiring the rule manual to include instructions on filing a notice of rule-making in the Register.

Modifies 150B-63(e) as described.

Adds the clerk of superior court of each county to the list of persons who receive a free copy of the Register.

Adds the clerk of superior court of each county to the list of persons who receive a free copy of the Code.

soon after publication as practical, without charge, to the following:

- (1) One copy to the board of commissioners of each county in the State.
- (2) One copy to the clerk of superior court of each county in the State.
- (3) One copy to the Commission.
- (4) One copy to the clerk of the Supreme Court and to the clerk of the Court of Appeals of North Carolina.
- (5) One copy to the Supreme Court Library and one copy to the library of the Court of Appeals.
- (6) One copy to the Administrative Office of the Courts.
- (7) One copy to the Governor.
- (8) Five copies to the Legislative Services Commission for the use of the General Assembly.
- (9) Upon request, one copy to each State official or department to whom or to which copies of the appellate division reports are furnished under G.S. 7A-343.1.
- (10) Five copies to the Division of State Library of the Department of Cultural Resources pursuant to G.S. 125-11.7.

"§ 150B-21.25. Paid copies of Register and Code.

A person who is not entitled to a free copy of the North Carolina Administrative Code or North Carolina Register may obtain a copy by paying a fee set by the Codifier of Rules. The Codifier must set separate fees for the North Carolina Register and the North Carolina Administrative Code in amounts that cover publication, copying, and mailing costs. All monies received under this section must be credited to the General Fund."

Sec. 2. G.S. 150B-1 reads as rewritten:

"§ 150B-1. Policy and scope.

(a) Purpose.-- The policy of the State is that the three powers of government, legislative, executive, and judicial, are, and should remain, separate. The intent of this Chapter is to prevent the commingling of those powers in any administrative agency and to This Chapter establishes a uniform system of administrative rule-

Same as current law, 150B-63(f).

Modifies current law as described.

Deletes language concerning the commingling of powers in an agency because the language conflicts with the nature of an agency.

making and adjudicatory procedures for agencies. The procedures ensure that the functions of rule making, investigation, advocacy, and adjudication are not all performed by the same person in the administrative process.

(b) Rights.-- The purpose of this Chapter is to establish as nearly as possible a uniform system of administrative rule making and adjudicatory procedures for State agencies. This Chapter confers procedural rights but does not confer substantive rights.

(c) Full Exemptions.-- This Chapter shall apply to every agency, as defined in G.S. 150B-2(1), except to the extent and in the particulars that any statute, including subsection (d) of this section, makes specific provisions to the contrary. applies to every agency except:

- (1) The North Carolina National Guard in exercising its court-martial jurisdiction.
- (2) The Department of Human Resources in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.
- (3) The Utilities Commission.
- (4) The Industrial Commission.
- (5) The Employment Security Commission.

(d) Exemptions From Rule-making.-- Article 2A of this Chapter does not apply to the following:

- (1) The Commission.
- (2) The North Carolina Low-Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-10 and G.S. 104G-11.
- (3) The North Carolina Hazardous Waste Management Commission in administering the provisions of G.S. 130B-13 and G.S. 130B-14.
- (4) The Department of Revenue.
- (5) The Department of Correction.
- (6) The Department of Transportation.

(e) Exemptions From Contested Case Provisions.-- The contested case provisions of this Chapter do not apply to the following:

Clarifies that the APA does not confer a substantive right.

Changes current law by deleting the full exemption for the Rules Review Commission and the Occupational Safety and Health Review Board.

Makes current law more uniform by applying the APA rule-making procedures to all rules of the Occupational Safety and Health Division of the Department of Labor. It preserves the exemptions for the Industrial Commission, the Employment Security Commission, the Department of Correction, the Department of Revenue, and the Department of Transportation.

Same as current law. The Rules Review Commission is no longer listed as exempt from the contested case provisions, but rule-making is not a contested case.

- (1) The Department of Human Resources and the Department of Environmental, Health, and Natural Resources in complying with the procedural safeguards mandated by Section 680 of Part H of Public law 99-457 as amended (Education of the Handicapped Act Amendments of 1986).
- (2) The Governor's Waste Management Board in administering the provisions of G.S. 104E-6.2 and G.S. 130A-293.
- (3) The North Carolina Low-Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-9, 104G-10, and 104G-11.
- (4) The North Carolina Hazardous Waste Management Commission in administering the provisions of G.S. 130B-11, 130B-13, and 130B-14.
- (5) Hearings required pursuant to the Rehabilitation Act of 1973, (Public Law 93-122), as amended and federal regulations promulgated thereunder. G.S. 150B-51(a) is considered a contested case hearing provision that does not apply to these hearings.
- (6) The Department of Revenue.
- (7) The Department of Correction.
- (8) The Department of Transportation, except as provided in G.S. 136-29.
- (9) The Occupational Safety and Health Review Board in all actions that do not involve agricultural employers.

(f) Exemption From All But Judicial Review.-- No Article in this Chapter except Article 4 applies to The University of North Carolina.

Same as current law.

- (1) ~~The following are specifically exempted from the provisions of this Chapter:~~
- a- ~~The Administrative Rules Review Commission;~~
 - b- ~~The Employment Security Commission;~~
 - c- ~~The Industrial Commission;~~
 - d- ~~The Occupational Safety and Health Review Board in all actions that do not involve agricultural employers; and~~

e. ~~The Utilities Commission.~~

- ~~(2) The North Carolina National Guard is exempt from the provisions of this Chapter in exercising its court martial jurisdiction.~~
- ~~(3) The Department of Human Resources is exempt from this Chapter in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes. The Department of Human Resources and the Department of Environmental, Health, and Natural Resources are exempt from Article 3 of this Chapter in complying with the procedural safeguards mandated by the Section 680 of Part H of P.L. 99-457 as amended (Education of the Handicapped Act Amendments of 1986).~~
- ~~(4) The Department of Correction is exempt from the provisions of this Chapter, except for Article 5 of this Chapter and G.S. 150B-13 which shall apply.~~
- ~~(5) Articles 2 and 3 of this Chapter shall not apply to the Department of Revenue.~~
- ~~(6) Except as provided in Chapter 136 of the General Statutes, Articles 2 and 3 of this Chapter do not apply to the Department of Transportation.~~
- ~~(7) Article 4 of this Chapter, governing judicial review of final administrative decisions, shall apply to The University of North Carolina and its constituent or affiliated boards, agencies, and institutions, but The University of North Carolina and its constituent or affiliated boards, agencies, and institutions are specifically exempted from the remaining provisions of this Chapter.~~
- ~~(8) Article 4 of this Chapter shall not apply to the State Banking Commission, the Commissioner of Banks, the Savings Institutions Division of the Department of Economic and Community Development, and the~~

Credit Union Division of the Department of Economic and Community Development.

- (9) ~~Article 3 of this Chapter shall not apply to agencies governed by the provisions of Article 3A of this Chapter, as set out in G.S. 150B-38(a).~~
- (10) ~~Articles 3 and 3A of this Chapter shall not apply to the Governor's Waste Management Board in administering the provisions of G.S. 104E-6.2 and G.S. 130A-293.~~
- (11) ~~Article 2 of this Chapter shall not apply to the North Carolina Low Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-10 and G.S. 104G-11. Articles 3 and 3A of this Chapter shall not apply to the North Carolina Low Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-9, 104G-10, and 104G-11.~~
- (12) ~~Article 2 of this Chapter shall not apply to the North Carolina Hazardous Waste Management Commission in administering the provisions of G.S. 130B-13 and G.S. 130B-14. Articles 3 and 3A of this Chapter shall not apply to the North Carolina Hazardous Waste Management Commission in administering the provisions of G.S. 130B-11, 130B-13, and 130B-14.~~
- (13) ~~Article 3 and G.S. 150B-51(a) of this Chapter shall not apply to hearings required pursuant to the Rehabilitation Act of 1973, (Public Law 93-122), as amended and federal regulations promulgated thereunder."~~

Sec. 3. G.S. 150B-2 reads as rewritten:

"§ 150B-2. Definitions.

As used in this Chapter,

- (01) 'Administrative law judge' means a person appointed under G.S. 7A-752, 7A-753, or 7A-757.
- (1) 'Agency' means ~~any agency, institution, board, commission, bureau, department, division, council, member of the Council of State, or officer of the State government of~~

Changes the definitions that apply in the APA as described.

No change.

Simplifies the definition of agency but does not change substance.

~~the State of North Carolina but does not include any agency in the legislative or judicial branch of the State government; and does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of such subdivisions, or local boards of education, other local public districts, units or bodies of any kind, or private corporations created by act of the General Assembly. an agency or an officer in the executive branch of the government of this State and includes the Council of State, the Governor's Office, a board, a commission, a department, a division, a council, and any other unit of government in the executive branch. A local unit of government is not an agency.~~

(1a) 'Adopt' means to take final action to create, amend, or repeal a rule.

(1b) 'Codifier of Rules' means the Chief Administrative Law Judge of the Office of Administrative Hearings or a designated representative of the Chief Administrative Law Judge.

(1c) 'Commission' means the Rules Review Commission.

(2) 'Contested case' means an administrative proceeding pursuant to this Chapter to resolve a dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty. 'Contested case' does not include rule-making, declaratory rulings, or the award or denial of a scholarship or grant.

(2a) 'Effective' means that a valid rule has been filed as required by G.S. 150B-59 and, if applicable, that the time specified in that section has elapsed. A rule that is effective is enforceable to the extent permitted by law.

New.

New. The Director of OAH currently performs the function of the Codifier of Rules but is not designated the Codifier of Rules.

New.

No change.

Deleted because it is unnecessary. Proposed section 150B-21.3 specifies when a rule becomes effective.

(2b) 'Hearing officer' means a person or group of persons designated by an agency that is subject to Article 3A of this Chapter to preside in a contested case hearing conducted under that Article.

No change.

(2c) 'Law' means an enactment of the General Assembly.

New. Makes clear the term includes a session law that is not codified in the General Statutes.

(3) 'License' means any certificate, permit or other evidence, by whatever name called, of a right or privilege to engage in any activity, except licenses issued under Chapter 20 and Subchapter I of Chapter 105 of the General Statutes and occupational licenses.

No change.

(4) 'Licensing' means any administrative action issuing, failing to issue, suspending, or revoking a license or occupational license. 'Licensing' does not include controversies over whether an examination was fair or whether the applicant passed the examination.

No change.

(4a) 'Occupational license' means any certificate, permit, or other evidence, by whatever name called, of a right of privilege to engage in a profession, occupation, or field of endeavor that is issued by an occupational licensing agency.

(4b) 'Occupational licensing agency' means any board, commission, committee or other agency of the State of North Carolina which is established for the primary purpose of regulating the entry of persons into, and/or the conduct of persons within a particular profession, occupation or field of endeavor, and which is authorized to issue and revoke licenses. 'Occupational licensing agency' does not include State agencies or departments which may as only a part of their regular function issue permits or licenses.

(5) 'Party' means any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate. This subdivision does not permit an agency that makes a final

No change.

decision, or an officer or employee of the agency, to petition for initial judicial review of that decision.

- (6) 'Person aggrieved' means any person or group of persons of common interest directly or indirectly affected substantially in his or its person, property, or employment by an administrative decision.
- (7) 'Person' means any natural person, partnership, corporation, body politic and any unincorporated association, organization, or society which may sue or be sued under a common name.
- (8) 'Residence' means domicile or principal place of business.
- (8a) 'Rule' means any agency regulation, ~~standard~~ standard, or statement of general applicability that implements or interprets ~~laws enacted by an enactment of the General Assembly or Congress or regulations promulgated a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. any agency not inconsistent with laws enacted by the General Assembly.~~ The term includes the amendment or repeal of a prior rule. The term does not include the following:
- a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143-11 or 143B-6, including policies and procedures manuals, if ~~such a the~~ statement does not directly or substantially affect the procedural or substantive rights or duties of a person ~~persons~~ not employed by the agency or group of agencies.
 - b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3,

No change.

No change.

No change.

Makes technical corrections to cross-references, makes grammatical corrections, clarifies the exclusion for instructions conveyed through signs, and excludes job classification standards, job qualifications, and salaries established by the State Personnel Commission from the definition of rule.

- by an occupational licensing board, as defined by G.S. 93B-1, or by the State Board of Elections.
- c. Nonbinding interpretative statements within the delegated authority of the an agency that merely define, interpret interpret, or explain the meaning of a statute or rule. other provision of law or precedent.
 - d. A form, the contents or substantive requirements of which are prescribed by rule or statute. statute or the instructions for the execution or use of the form.
 - e. Statements of agency policy made in the context of another proceeding, including:
 - 1. Declaratory rulings under ~~G.S.~~ 150B-17; G.S. 150B-4.
 - 2. Orders establishing or fixing rates or tariffs.
 - f. ~~Statements of agency policy, provided that the agency policy is not inconsistent with any law enacted by the General Assembly, Instructions, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, or facilities. concerning:~~
 - 1. ~~The use or creation of public roads or bridges;~~
 - 2. ~~The boundaries of public facilities and times when public facilities are open to the public; or~~
 - 3. ~~Safety in use of public facilities.~~
 - g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or

in the defense, prosecution, or settlement of ~~cases;~~ cases.

- h. Scientific, architectural, or engineering standards, forms, or procedures.
- i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Personnel Commission.

(8b) 'Substantial evidence' means relevant evidence a reasonable mind might accept as adequate to support a conclusion.

(9) ~~'Valid' means that the rule has been adopted pursuant to the procedure required by law. A valid rule is unenforceable until it becomes effective."~~

Sec. 4. G.S. 150B-17 is recodified as G.S. 150B-4 in Article 1 of Chapter 150B of the General Statutes.

Sec. 5. G.S. 12-3.1, Article 2 of Chapter 150B of the General Statutes, as amended by this act, Article 5 of Chapter 150B of the General Statutes, G.S. 143B-30, and G.S. 143B-30.3 are repealed.

Sec. 6. G.S. 84-21 reads as rewritten:

"§ 84-21. Organization of council; publication of rules, regulations and bylaws.

Upon receiving notification of the election of a councilor for each judicial district, or, if such notification shall not have been received from all said districts, within 120 days after this Article shall have gone into effect, the clerk of the Supreme Court of North Carolina shall call a meeting of the councilors of whose election he shall have been notified, to be held in the City of Raleigh not less than 20 days nor more than 30 days after the date of said call; and at the meeting so held the councilors attending the same shall proceed to organize the council by electing officers, taking appropriate steps toward the adoption of rules and regulations, electing councilors for judicial districts which have failed to elect them, and taking such other action as they may deem to be in furtherance of this Article. The regular

No change.

Deleted because it is not used.

Moves the statute on declaratory rulings from Article 2 to Article 1 of 150B because the bill repeals Article 2.

Repeals statutes that are incorporated in the new Article 2A.

Makes a conforming change to the change made in 150B-21.21 requiring rules adopted by the State Bar Council to be included in the Code.

term of all officers shall be one year, but those first elected shall serve until January 1, 1935. The council shall be the judge of the election and qualifications of its own members. When the council shall have been fully organized and shall have adopted such rules, regulations and bylaws, not inconsistent with this Article, as it shall deem necessary or expedient for the discharge of its duties, the secretary-treasurer shall file with the clerk of the Supreme Court of North Carolina a certificate, to be called the 'certificate of organization,' showing the officers and members of the council, with the judicial districts which the members respectively represent, and their post-office addresses, and the rules, regulations and bylaws adopted by it; and thereupon the Chief Justice of the Supreme Court of North Carolina, or any judge thereof, if the court be then in vacation, shall examine the said certificate and, if of opinion that the requirements of this Article have been complied with, shall cause the said certificate to be spread upon the minutes of the court; but if of opinion that the requirements of this Article have not been complied with, shall return the said certificate to the secretary-treasurer with a statement showing in what respects the provisions of this Article have not been complied with; and the said certificate shall not be again presented to the Chief Justice of the Supreme Court or any judge thereof, until any such defects in the organization of the council shall have been corrected, at which time a new certificate of organization shall be presented and the same course taken as hereinabove provided, and so on until a correct certificate showing the proper organization of the council shall have been presented, and the organization of the council accordingly completed. Upon (a) the entry of an order upon the minutes of the court that the requirements of this Article have been complied with, or (b) if for any reason the Chief Justice or judge should not act thereon within 30 days, then, after the lapse of 30 days from the presentation to the Chief Justice or judge, as the case may be, of any certificate of organization hereinbefore required

to be presented by the secretary-treasurer, without either the entry of an order or the return of said certificate with a statement showing the respects in which this Article has not been complied with, the organization of the council shall be deemed to be complete, and it shall be vested with the powers herein set forth; and the certificate of organization shall thereupon forthwith be spread upon the minutes of the court. A copy of the certificate of organization, as spread upon the minutes of the court, shall be published in the next ensuing volume of the North Carolina Reports—Reports and in the North Carolina Administrative Code. The rules and regulations set forth in the certificate of organization, and all other rules and regulations which may be adopted by the council under this Article, may be amended by the council from time to time in any manner not inconsistent with this Article. Copies of all such rules and regulations adopted subsequently to the filing of the certificate of organization, and of all amendments so made by the council, shall be certified to the Chief Justice of the Supreme Court of North Carolina, entered by it upon its minutes, and published in the next ensuing number of the North Carolina Reports—Reports and in the North Carolina Administrative Code: Provided, that the court may decline to have so entered upon its minutes any of such rules, regulations and amendments which in the opinion of the Chief Justice are inconsistent with this Article."

Sec. 7. G.S. 95-131 reads as rewritten:

"§ 95-131. **Development and promulgation of standards; adoption of federal standards and regulations.**

(a) All occupational safety and health standards promulgated under the federal act by the Secretary, and any modifications, revision, amendments or revocations in accordance with the authority conferred by the federal act or any other federal act or agency relating to safety and health and adopted by the Secretary, shall be adopted as the rules of the Commissioner of this State unless the Commissioner shall promulgate decides to adopt an alternative State rule or standard

Makes conforming changes to the Occupational Safety and Health statutes to reflect the inclusion of the standards under the APA rule-making provisions.

as effective as the federal requirement and providing safe and healthful employment in places of employment as required by the federal act and standards and regulations heretofore referred to and as provided by the Occupational Safety and Health Act of 1970. ~~All standards and rules promulgated under the federal act by the Secretary, and any modifications, revisions, or revocations in accordance with the authority conferred by the federal act, or any other federal act or agency relating to safety and health and adopted by the Secretary, shall become effective upon the date the same are filed by the Commissioner in the Office of Administrative Hearings in accordance with G.S. 150B-59. Chapter 150B of the General Statutes governs the adoption of rules by the Commissioner.~~

~~(b) In the event the Commissioner shall develop his own standards and regulations relating to occupational safety and health which he shall consider to be as effective and efficient as any of the federal regulations or standards, then the Commissioner may by regulation promulgate, modify, or revoke any occupational safety or health standard developed by him in the following manner:~~

- ~~(1) Whenever the need or desirability of promulgating a regulation or standard by the Commissioner which serves the objective of this Article is indicated by information submitted in writing to the Commissioner by any interested person, employer, employee, or representative of any organization of employers or employees or upon information derived from recognized standards producing organizations or upon the basis of information developed by the Commissioner or otherwise available to him, he shall determine the scope of issue to be covered by such standard or regulation and the method to be followed in the development of such standard or regulation. If the Commissioner finds it desirable he may request the recommendation of the Advisory Council appointed under this Article and shall~~

provide such Advisory Council with any proposals of his own, together with all pertinent factual information developed by technical experts or otherwise available, including the result of research, demonstrations, experiments, and experience. Recommendations of the Advisory Council shall be submitted to the Commissioner within 90 days from the date of the receipt of such request or within such longer or shorter period as may be prescribed by the Commissioner, but in no event for a period which is longer than 270 days.

(2)

When the Commissioner wishes to promulgate a regulation or standard in this section, he shall consider any proposed revisions prior to publication of proposed standards and regulations under subdivision (3) of this subsection, and may make revisions appropriate to the effectiveness of the proposed standards and regulations.

(3)

The Commissioner shall, following the review provided for in subdivision (2) above, publish a notice that he intends to issue a standard or regulation modifying or revoking an occupational safety or health standard or regulation in one newspaper of general circulation in Asheville, Charlotte, Durham, Greensboro, Raleigh, Wilmington and Winston-Salem, and shall afford interested persons a period of 30 days after publication to submit written data or comments. The notice shall describe the content of the proposed regulation and shall state where copies of the proposed rule, regulation or standard may be obtained.

(4)

On or before the last day of the period provided for the submission of written data or comment under subdivision (3) above, any interested person may file with the Commissioner written objections to the proposed regulation, rule or standard,

~~stating the grounds therefor and requesting a public hearing on such objections. Within 30 days after the last day for filing such objections, the Commissioner shall issue a call for a public hearing on the proposed occupational safety or health rule, regulation or standard to which such objections have been filed. The notice of hearing shall be published in one newspaper of general circulation in Asheville, Charlotte, Durham, Greensboro, Raleigh, Wilmington and Winston-Salem, 30 days prior to the hearing. The notice shall include the date, time, and place of the hearing and shall indicate concisely and accurately the subject matter of the proposed rule, regulation or standard to which objections have been filed. It shall also state where copies of the full text of the proposed rule, regulation or standard may be obtained. The hearing shall be presided over by the Commissioner or any authorized agent of the Department, or he may delegate such presiding to the Director and shall provide reasonable opportunity for reception of opinions, memoranda and advice concerning such proposed regulation, rule or standard by interested persons and organizations.~~

(5)

~~Within 60 days after the expiration of the period provided for the submission of written data or comments as provided by this section, or within 60 days after the completion of any hearing held under the provision of this section, the Commissioner shall issue a regulation promulgating, modifying, or revoking such occupational safety or health standard, rule or regulation so developed by him, or make a determination that such rule, standard or regulation shall not be issued. In addition, he shall issue a statement of reasons for any changes made from the proposed regulation, rule or standard, or~~

(6)

reasons why no regulation, rule or standard was issued. Such regulation, rule or standard may contain a provision delaying its effective date for such period (not in excess of 90 days) as the Commissioner determines may be necessary to insure that affected employers and employees will be informed of the existence of the rule, regulation or standard and of its terms and that employers affected are given an opportunity to familiarize themselves and their employees with the existence of the requirements of the rule, regulation or standard. Notice of such promulgation, modification or revocation, shall be published in the same manner as heretofore provided in this section and as related to the publication of proposed rules, regulations and standards. Copies of the Commissioner's ruling shall be made available without cost to reasonably interested parties.

(7)

Upon adoption by the enactment of this Article of the occupational safety or health standards, rules or regulations, promulgated under the federal act by the Secretary, and modifications, revisions, or revocations in accordance with the authority conferred by the federal act or any other federal act or agency relating to safety and health adopted by the Secretary, such rules, regulations and standards may be issued and promulgated without meeting the requirements of publication of proposed regulations, rules or standards and without meeting the requirements of hearings as provided in this section. Notice published in the federal register, with reference to proposed change of standards, shall be deemed to be notice to employers and employees with regard to that change. Hearings and the findings of the Secretary of Labor with reference to the proposed change of standards, shall be

~~substituted for the hearing and findings of the Commissioner.~~

- ~~(c)~~ (1) ~~The Commissioner shall provide, without regard to the aforementioned subdivision in this section, for an emergency temporary standard to take immediate effect upon publication of such emergency temporary standard in one newspaper of general circulation in Asheville, Charlotte, Durham, Greensboro, Raleigh, Wilmington and Winston-Salem if he determines (i) that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and (ii) that such emergency standard is necessary to protect employees from such danger.~~
- (2) ~~Emergency standards may cover issues not dealt with by statutes or regulations in existence and may displace standards heretofore promulgated.~~
- (3) ~~Any such emergency temporary standard shall be effective until superseded by a standard promulgated in accordance with the procedures prescribed in subdivision (4) of this subsection.~~
- (4) ~~Upon publication of such emergency temporary standard, the Commissioner shall commence a proceeding in accordance with G.S. 95-131(c) of this Article, and the emergency standard as published shall also serve as a proposed regulation for the proceeding. He shall thereupon promulgate a standard under this subdivision no later than six months after publication of the emergency standard as provided in subdivision (1) of this subsection.~~
- (d) (1) ~~Regulations issued under subsections (b) and (c) of Rules adopted under this section shall provide insofar as~~

possible the highest degree of safety and health protection for employees; other considerations shall be the latest available scientific data in the field, the feasibility of the standard, and experience gained under this and other health and safety laws. Whenever practical the standards ~~promulgated~~ established in a rule shall be expressed in terms of objective criteria and of the performance desired. In ~~promulgating~~ establishing standards dealing with toxic materials or harmful physical agents, the Commissioner, after consultation and recommendations of the Department of Human Resources, shall set a standard which most adequately assures, to the extent possible, on the basis of the most available evidence that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.

~~(2) Upon adoption of this Article, all rules and procedures set forth in section 6(b)(7) of the federal act will be hereinafter adopted and applied.~~

~~(e) The Commissioner shall not develop or promulgate~~ may not adopt State standards, for products distributed or used in interstate commerce, which are different from federal standards for such products unless the ~~promulgation~~ adoption of such State standard, or standards, ~~are~~ is required by compelling local conditions and ~~do~~ does not unduly burden interstate commerce.

~~(f) Notwithstanding any other provision of this section, in the event the Commissioner shall develop any rule, regulation, scope, or standard for agricultural employers which differs from the federal regulations or standards, he shall promulgate these~~

~~rules, standards and regulations pursuant to Articles 2 and 5 of Chapter 150B and Part 3 of Article 1 of Chapter 143B.~~

(g) Any rule, regulation, scope, or standard for agricultural employers adopted or promulgated prior to July 12, 1988, that differs from the federal rule, regulation, scope, or standard is repealed effective September 1, 1989, unless readopted pursuant to Chapter 150B of the General Statutes."

Sec. 8. G.S. 143B-14(b) reads as rewritten:

~~"(b) Except as otherwise provided in the Executive Organization Act of 1973, in G.S. 120-30.28, or in G.S. 150B-11(3), by law, the powers, duties, and functions of a commission (including but not limited to rule making, regulation, licensing, and promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications) shall not be and are not subject to the approval, review, or control of the head of the department or of the Governor. Provided, however, that the provisions of this subsection shall not apply to the review of rules by the Governor's Administrative Rules Review Commission."~~

Sec. 9. G.S. 143B-18 and 143B-20 are repealed.

Sec. 10. The catchline to G.S. 143B-30.1 and G.S. 143B-30.1(a) read as rewritten:

~~"§ 143B-30.1. Administrative Rules Review Commission created.~~

(a) The Administrative Rules Review Commission is created. The Commission shall consist of eight members to be appointed by the General Assembly, four upon the recommendation of the President of the Senate, and four upon the recommendation of the Speaker of the House of Representatives. These appointments shall be made in accordance with G.S. 120-121, and vacancies in these appointments shall be filled in accordance with G.S. 120-122. Except as provided in subsection (b) of this section, all appointees shall serve two-year terms."

Sec. 11. G.S. 143B-30.2 reads as rewritten:

~~"§ 143B-30.2. Review of rules. Purpose of Commission.~~

Deletes references to repealed statutes and unnecessary language.

Deletes obsolete provisions on rule-making. Changes the reference to the Commission to reflect the change in 150B-2.

Deletes portions of 143B-30.2 that are included in new Article 2A.

The Rules Review Commission reviews administrative rules in accordance with Chapter 150B of the General Statutes.

~~(a) Rules adopted by an agency on or after September 1, 1986, shall be submitted to the Administrative Rules Review Commission, which shall review the rule to determine whether it:~~

~~(1) Is within the authority delegated to the agency by the General Assembly;~~

~~(2) Is clear and unambiguous;~~

~~(3) Is reasonably necessary to enable the administrative agency to perform a function assigned to it by statute or to enable or facilitate the implementation of a program or policy in aid of which the rule was adopted.~~

~~Any rule filed by the 20th of a month shall be reviewed by the Commission by the last day of the next calendar month. Any rule filed after the 20th of a month shall be reviewed by the Commission by the last day of the second subsequent calendar month. The Commission may extend the time for review of a rule by a period of up to 70 days to obtain additional information on the rule. The Commission shall file notice of the extension of time for review of a rule with the agency and the Director of the Office of Administrative Hearings. A rule may not be presented for filing with the Director of the Office of Administrative Hearings under G.S. 150B-59 unless the rule has been reviewed by the Commission as provided in this section.~~

~~(b) If the Commission reviews a rule and determines that it is within the authority delegated to the agency, is clear and unambiguous, and is reasonably necessary, the Commission shall note its approval, notify the agency, and file the rule with the Director of the Office of Administrative Hearings under G.S. 150B-59, and the rule shall become effective as provided in that section.~~

~~(c) If the Commission finds that an agency did not act within the authority delegated to it in promulgating a rule or a part of a rule, or that a rule is not clear and unambiguous, or that a rule is~~

~~unnecessary, the Commission shall object and delay the filing of the rule or part of the rule under G.S. 150B-59 for a period not to exceed 90 days. The Commission shall send to the agency, the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Administrative Hearings, a written report of the objection and delay of the rule or its part and the reasons for the delay. An agency may not present a rule or part of a rule that has been delayed to the Director of the Office of Administrative Hearings for filing under G.S. 150B-59, and a rule or its part that is delayed is not "effective," as defined in G.S. 150B-2(2a).~~

~~(d) Within 30 days after receipt of the Commission's written report as authorized by (c), the agency shall either (1) revise the rule to remove the cause of the objections of the Commission and return the revised rule to the Commission or (2) return the rule to the Commission without change with the Commission's objections attached; provided, however, that in the case of a board, committee, council, or commission the response is due within 30 days after receipt of the Commission's written report or within 10 days following the next regularly scheduled meeting of the board, committee, council, or commission, whichever time period is greater. The Commission shall determine whether a revision removes its objections to the rule.~~

~~(e) If the Commission determines that a revision of a rule has removed the Commission's objections, the Commission shall note its approval and return the rule to the agency. The agency may then file the rule with the Director of the Office of Administrative Hearings under G.S. 150B-59, and the rule shall become effective as provided in that section.~~

~~(f) Regardless of whether the agency returns the rule to the Commission without change instead of revising the rule to remove the Commission's objections or whether the Commission determines that a revision of a rule has not removed its objections, the Commission shall note its review of and objection to the rule once 90 days have passed since the Commission objected and~~

~~delayed the filing of the rule or part of the rule pursuant to G.S. 143B 30.2(c) and shall return the rule to the agency. The agency may then file the rule with the Director of the Office of Administrative Hearings under G.S. 150B 59, and the rule shall become effective as provided in that section. If the agency did not remove the Commission's objections to the rule or part of the rule, the Commission may send to the President of the Senate and the Speaker of the House of Representatives a written report of its objections to the rule. Thereafter, if the General Assembly enacts legislation disapproving the rule, the rule shall no longer be effective.~~

~~The Legislative Services Officer shall send a copy of any law disapproving a rule to the agency and the Director of the Office of Administrative Hearings as soon as a copy is available.~~

~~(g) While the filing of a rule or its part is delayed, the agency that promulgated it may not adopt another rule, including a temporary rule, that has substantially identical provisions to those for which the Commission delayed the filing of the original rule or part of a rule.~~

~~(h) The filing of an amendment to a rule places the entire rule before the Commission for its review.~~

~~(i) Rules adopted in accordance with the procedure in G.S. 150B 13 shall be reviewed by the Commission and are subject to objection as provided in (c).~~

~~The Commission shall review the reasons given for the adoption of a temporary rule and may object to the rule due to the agency's failure to make the finding required by G.S. 150B 13. "~~

Sec. 12. G.S. 120-30.48 reads as rewritten:
"§ 120-30.48. Fiscal impact of administrative actions, rules.

~~(a) An agency subject to Article 2 of Chapter 150B of the General Statutes shall file a fiscal note for a proposed new rule, or a proposed amendment or repeal of an existing rule, that can affect the expenditures or revenues of a unit of local government. The fiscal note shall be filed with the Fiscal Research Division, the Office of State Budget and Management, the North~~

Deletes portions of 120-30.48 that are included in proposed 150B-21.4(b).

~~Carolina Association of County Commissioners, and the North Carolina League of Municipalities. The fiscal note shall be filed with the entities listed no later than the date specified in G.S. 150B-11.~~

~~(b) This section shall not affect any emergency rule under G.S. 150B-13. is required to prepare a fiscal note on a proposed administrative rule that affects the expenditures or revenues of a unit of local government as provided in G.S. 150B-21.4."~~

Sec. 13. G.S. 147-16.1 reads as rewritten:

"§ 147-16.1. Publication of executive orders.

~~Executive orders of the Governor shall be filed and published as provided by Article 5 of Chapter 150B of the General Statutes. The Governor must submit Executive Orders to the Secretary of State, who must compile, index, and publish the Executive Orders. The Governor's office shall also send a copy of each executive order to the President of the Senate, to the Speaker of the House of Representatives, to the Principal Clerk of the House of Representatives and to the Principal Clerk of the Senate."~~

Sec. 14. G.S. 148-11 reads as rewritten:

"§ 148-11. Authority to make regulations.

The Secretary shall adopt rules for the government of the State prison system and shall file and publish such rules in accordance with ~~the provisions of Article 5 of Chapter 150B~~. In the case of temporary rules, such rules shall become effective immediately upon adoption by the Secretary and shall be filed ~~in accordance with G.S. 150B-13~~ with the Codifier of Rules within two working days of adoption. The Secretary shall have such portion of these rules and regulations as pertain to enforcing discipline read to every prisoner when received in the State prison system and a printed copy of these rules and regulations shall be made available to the prisoners."

Sec. 15. Section 19 of Chapter 746 of the 1985 Session Laws reads as rewritten:

"Sec. 19. This act is effective upon ratification, except Sections 1, 4, 5, 6, 8, 13, 14, 15, 16, 17, 18, and 18.1. Sections 1, 4, 8, 13, 14, 15, 16, 17, and 18 shall become effective January 1, 1986. Sections 5 and

Changes current law by requiring the Secretary of State to publish the Governor's executive orders rather than publishing the orders as part of the Code.

Makes conforming changes to the Correction Department statutes to reflect the recodification of the APA rule-making provisions.

Repeals the January 1, 1992, sunset on the Rules Review Commission.

6 shall become effective 30 days from the date the Supreme Court issues an advisory opinion on the constitutionality of those sections unless the opinion states that those sections are unconstitutional, in which event those sections shall not become effective. Section 18.1 shall become effective only if the Supreme Court issues an advisory opinion that the appointment of the chief hearing officer by the Chief Justice is unconstitutional and shall become effective on the date that opinion is issued. ~~This act~~ All but Section 5 of this act shall expire January 1, 1992, and shall not be effective on or after that date. This act shall not affect contested cases commenced before January 1, 1986."

Sec. 16. This act shall become effective October 1, 1991. The procedures in G.S. 150B, Article 2A, as set forth in this act, shall apply to all rules for which a notice of rule-making is published in the North Carolina Register on or after that date, and to all rules that do not require publication of a notice of rule-making and are adopted on or after that date.

States when the act is effective.

N.C. GENERAL ASSEMBLY LEGISLATIVE FISCAL NOTE

Fiscal Research
733-4910

Prepared By: Louise Young <i>L. Y.</i>		Date Prepared: 11-27-90	Bill No.: 91-LJ-9	Edition: (1.3) D		
Approved By: Tom Covington					Sponsor: APA Study Committee	
Short Title: IMPROVE APA Rule-Making Process						
TYPE OF FISCAL IMPACT			FUNDS AFFECTED:			
			() Other:			
			() General () Highway () Local			
			State Fiscal Impact			
			FY		FY	
			90-91		91-92	
No Fiscal Impact	State Gov't (x)	Local Gov't (X)	State Total Req'ments		-0- -0-	
Increase Expenditure	()	()	Receipts/Revenues		-0- -0-	
Decrease Expenditure	()	()	Net State Expend./Rev.		-0- -0-	
			No. of Positions		-0- -0-	
			Local Fiscal Impact			
			FY		FY	
			FY		FY	
Increase Revenue	()	()	Local Total Req'ments			
Decrease Revenue	()	()	Receipts/Revenues			
No Estimate Avail.	()	()	Net Local Expend./Rev.			
			No. of Positions			

Description of Legislation

1. Summary of Legislation

The bill expands the scope of Articles 2 and 5 of the Administrative Procedures Act for rulemaking and publication to include all rules of the Occupational Safety and Health Division of the Department of Labor. The bill also requires the State Bar, the Industrial Commission and the Utilities Commission to publish their rules in the Administrative Code.

The bill significantly reduces the time required for adoption of permanent rules by shortening the notice period and the period between approval by the Rules Review Commission and the effective date.

The bill requires that temporary rules be reviewed by the Codifier of Rules (Director of OAH) prior to filing to determine if the grounds for filing a temporary rule meets the criteria set out in G.S. 150B-21.1(a). If the rule is not approved by the Codifier, the agency cannot file it without the approval of a Superior Court Judge. The bill also removes temporary rules from review by the Rules Review Commission.

An agency is prohibited from filing a permanent rule that was objected to by the Rules Review Commission, if it declines to rewrite the rule, without a declaratory judgment from a Superior Court judge. This "suspension" only applies when the objection was based on lack of statutory authority. If the objection is due to unclear language or lack of reasonable necessity, it is so noted in the history note when the rule is filed for inclusion in the Administrative Code.

The bill requires that any waiver rule clearly state the conditions in which the waiver applies.

An agency is authorized to adopt a published rule without holding a hearing when none is requested. The bill also provides for "exploratory" rulemaking hearings where only the subject matter is published in the notice.

Republication is required when an adopted rule would differ substantially from the originally noticed text.

The Secretary of State is required to compile, index and publish Executive Orders of the Governor under Section 13 of the bill. The bill removes this responsibility from the Director of OAH.

In addition the bill makes numerous technical and conforming changes.

2. Effective Date

October 1, 1991

3. Fund or Tax Affected

4. Principal Department/Program Affected

Department of Labor, OSHA Program; Utilities Commission; Industrial Commission;
Office of Administrative Hearings; Secretary of State

Cost or Revenue Impact on State

	<u>FY</u> 90-91	<u>FY</u> 91-92	<u>FY</u>
1. Non-Recurring Costs/Revenues	-0-	-0-	
2. Recurring Costs/Revenues	-0-	-0-	
3. Fiscal/Revenue Assumptions			

The additional responsibilities imposed on the above principal departments by this bill are very minimal and the cost (if any) can be absorbed within their respective operating budgets.

Cost/Revenue Impact on County or Local Government

	<u>FY</u>	<u>FY</u>	<u>FY</u>
1. Non-Recurring Costs/Revenues			
2. Recurring Costs/Revenues			
3. Fiscal/Revenue Assumptions			

Sources of Data for Fiscal Note

Office of Administrative Hearings, Industrial Commission, Utilities Commission, Secretary of State's Office

Technical Considerations/Comments

LEGISLATIVE PROPOSAL II

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S or H

D

91-LJ-15 (1.2)

THIS IS A DRAFT AND NOT READY FOR INTRODUCTION

Short Title: APA Hearings/ Repeal APA Sunset. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES TO THE LAWS GOVERNING ADMINISTRATIVE
3 HEARINGS AND TO REPEAL THE SUNSET ON THE REVISED ADMINISTRATIVE
4 PROCEDURE ACT.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 150B-23 reads as rewritten:
7 "§ 150B-23. Commencement; assignment of administrative law judge;
8 hearing required; notice; intervention.
9 (a) A contested case shall be commenced by filing a petition
10 with the Office of Administrative Hearings and, except as
11 provided in Article 3A of this Chapter, shall be conducted by
12 that Office. The party who files the petition shall also serve a
13 copy of the petition on all other parties and and, if the dispute
14 concerns a license, the person who holds the license. A party
15 who files a petition shall file a certificate of service together
16 with the petition. Any A petition shall be signed by a party or a
17 representative of the party and, if filed by a party other than
18 an agency shall be verified or supported by affidavit and agency,
19 shall state facts tending to establish that the agency named as
20 the respondent has deprived the petitioner of property, has
21 ordered the petitioner to pay a fine or civil penalty, or has

1 otherwise substantially prejudiced the petitioner's rights and
2 that the agency:

- 3 (1) Exceeded its authority or jurisdiction;
- 4 (2) Acted erroneously;
- 5 (3) Failed to use proper procedure;
- 6 (4) Acted arbitrarily or capriciously; or
- 7 (5) Failed to act as required by law or rule.

8 The parties in a contested case shall be given an opportunity for
9 a hearing without undue delay. Any person aggrieved may commence
10 a contested case hereunder.

11 A local government employee, applicant for employment, or
12 former employee to whom Chapter 126 of the General Statutes
13 applies may commence a contested case under this Article in the
14 same manner as any other petitioner. The case shall be conducted
15 in the Office of Administrative Hearings in the same manner as
16 other contested cases under this Article, except that the
17 decision of the State Personnel Commission shall be advisory only
18 and not binding on the local appointing authority, unless (1) the
19 employee, applicant, or former employee has been subjected to
20 discrimination prohibited by Article 6 of Chapter 126 of the
21 General Statutes or (2) applicable federal standards require a
22 binding decision. In these two cases, the State Personnel
23 Commission's decision shall be binding.

24 (a1) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1022,
25 s. 1(9), effective July 15, 1986.

26 (a2) An administrative law judge assigned to a contested case
27 may require a party to the case to file a prehearing statement. A
28 party's prehearing statement must be served on all other parties
29 to the contested case.

30 (b) The parties to a contested case shall be given a notice of
31 hearing not less than 15 days before the hearing by the Office of
32 Administrative Hearings, which Hearings. If prehearing
33 statements have been filed in the case, the notice shall include:

34 (1) A statement of state the date, hour, place, and nature of
35 the hearing;

36 (2) A reference to and place of the hearing. If prehearing
37 statements have not been filed in the case, the notice shall
38 state the date, hour, place, and nature of the hearing, shall
39 list the particular sections of the statutes and rules involved;
40 and

41 (3) A involved, and shall give a short and plain statement of
42 the factual allegations.

43 (4) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1022,
44 s. 1(9), effective July 15, 1986.

1 (c) Notice shall be given personally or by certified mail. If
2 given by certified mail, it shall be deemed to have been given on
3 the delivery date appearing on the return receipt. If giving of
4 notice cannot be accomplished either personally or by certified
5 mail, notice shall then be given in the manner provided in G.S.
6 1A-1, Rule 4(j1).

7 (d) Any person may petition to become a party by filing a
8 motion to intervene in the manner provided in G.S. 1A-1, Rule 24.
9 In addition, any person interested in a contested case may
10 intervene and participate in that proceeding to the extent deemed
11 appropriate by the administrative law judge.

12 (e) All hearings under this Chapter shall be open to the
13 public. Hearings shall be conducted in an impartial manner.
14 Hearings shall be conducted according to the procedures set out
15 in this Article, except to the extent and in the particulars that
16 specific hearing procedures and time standards are governed by
17 another statute.

18 (f) Unless another statute or a federal statute or regulation
19 sets a time limitation for the filing of a petition in contested
20 cases against a specified agency, the general limitation for the
21 filing of a petition in a contested case is 60 days. The time
22 limitation, whether established by another statute, federal
23 statute, or federal regulation, or this section, shall commence
24 when notice is given of the agency decision to all persons
25 aggrieved who are known to the agency by personal delivery or by
26 the placing of the notice in an official depository of the United
27 States Postal Service wrapped in a wrapper addressed to the
28 person at the latest address given by the person to the agency.
29 The notice shall be in writing, and shall set forth the agency
30 action, and shall inform the persons of the right, the procedure,
31 and the time limit to file a contested case petition."

32 Sec. 2. G.S. 150B-25(b) is deleted.

33 Sec. 3. G.S. 150B-27 reads as rewritten"

34 "§ 150B-27. Subpoena.

35 After the commencement of a contested case, ~~the administrative~~
36 ~~law judge may issue subpoenas upon his own motion or upon a~~
37 ~~written request. When a written request for a subpoena has been~~
38 ~~made, the administrative law judge shall issue the requested~~
39 ~~subpoenas forthwith requiring the attendance and testimony of~~
40 ~~witnesses and the production of evidence including books,~~
41 ~~records, correspondence, and documents in their possession or~~
42 ~~under their control. subpoenas may be issued and served in~~
43 accordance with G.S. 1A-1, Rule 45. Upon written request, a
44 motion, the administrative law judge shall ~~revoke~~ may quash a

1 subpoena if, upon a hearing, ~~he~~ the administrative law judge
2 finds that the evidence the production of which is required does
3 not relate to a matter in issue, ~~or if~~ the subpoena does not
4 describe with sufficient particularity the evidence the
5 production of which is required, ~~or if~~ for any other reason
6 sufficient in law the subpoena ~~is invalid.~~ may be quashed.

7 Witness fees shall be paid by the party requesting the subpoena
8 to subpoenaed witnesses in accordance with G.S. 7A-314. However,
9 State officials or employees who are subpoenaed shall not be
10 entitled to witness fees, but they shall receive their normal
11 salary and they shall not be required to take any annual leave
12 for the witness days. Travel expenses of State officials or
13 employees who are subpoenaed shall be reimbursed as provided in
14 G.S. 138-6."

15 Sec. 4. G.S. 150B-29(a) reads as rewritten:

16 (a) In all contested cases, irrelevant, immaterial and unduly
17 repetitious evidence shall be excluded. Except as otherwise
18 provided, the rules of evidence as applied in the trial division
19 of the General Court of Justice shall be followed; but, when
20 evidence is not reasonably available under the rules to show
21 relevant facts, then the most reliable and substantial evidence
22 available shall be admitted. On the judge's own motion, an
23 administrative law judge may exclude evidence that is
24 inadmissible under this section. It shall not be necessary for a
25 party or his attorney to object at the hearing to evidence in
26 order to preserve the right to object to its consideration by the
27 administrative law judge in making a recommended decision, by the
28 agency in making a final decision, or by the court on judicial
29 review."

30 Sec. 5. G.S. 150B-33(b) reads as rewritten:

31 " (b) An administrative law judge may:

32 (1) Administer oaths and affirmations;

33 (2) ~~Sign and issue subpoenas in the name of the Office~~
34 ~~of Administrative Hearings, requiring attendance~~
35 ~~and giving of testimony by witnesses and the~~
36 ~~production of books, papers, and other documentary~~
37 ~~evidence; Sign, issue, and rule on subpoenas in~~
38 ~~accordance with G.S. 150B-27 and G.S. 1A-1, Rule~~
39 ~~45.~~

40 (3) Provide for the taking of testimony by deposition;
41 deposition and rule on all objections to discovery
42 in accordance with G.S. 1A-1, the Rules of Civil
43 Procedure;

- 1 (3a) Rule on all prehearing motions that are authorized
2 by G.S. 1A-1, the Rules of Civil Procedure.
- 3 (4) Regulate the course of the hearings, including
4 discovery, set the time and place for continued
5 hearings, and fix the time for filing of briefs and
6 other documents;
- 7 (5) Direct the parties to appear and confer to consider
8 simplification of the issues by consent of the
9 parties;
- 10 (6) Stay the contested action by the agency pending the
11 outcome of the case, upon such terms as he deems
12 proper, and subject to the provisions of G.S. 1A-1,
13 Rule 65;
- 14 (7) Determine whether the hearing shall be recorded by
15 a stenographer or by an electronic device; and
- 16 (8) Enter an order returnable in the General Court of
17 Justice, Superior Court Division, to show cause why
18 the person should not be held in contempt. The
19 Court shall have the power to impose punishment as
20 for contempt for any act which would constitute
21 direct or indirect contempt if the act occurred in
22 an action pending in Superior Court.
- 23 (9) Determine that a rule as applied in a particular
24 case is void because (1) it is not within the
25 statutory authority of the agency, (2) is not clear
26 and unambiguous to persons it is intended to
27 direct, guide, or assist, or (3) is not reasonably
28 necessary to enable the agency to ~~perform a~~
29 ~~function assigned to it by statute or to enable or~~
30 ~~facilitate the implementation of a program or~~
31 ~~policy in aid of which the rule was adopted.~~
32 fulfill a duty delegated to it by the General
33 Assembly.
- 34 (10) Impose the sanctions provided for in G.S. 1A-1 or
35 Chapter 3 of Title 26 of the North Carolina
36 Administrative Code for noncompliance with
37 applicable procedural rules.

38 Sec. 6. G.S. 150B-34(b) reads as rewritten:

39 "(b) After hearing the contested case and prior to issuing a
40 recommended decision, the administrative law judge ~~shall give~~
41 ~~each party an opportunity to~~ may order a party to file proposed
42 findings of fact and ~~to present~~ written arguments ~~to him.~~ in
43 support of the party's position. A party who is not ordered to

1 do so may, in the party's discretion, file proposed findings of
2 fact and written arguments."

3 Sec. 7. G.S. 150B-36 reads as rewritten:

4 "§ 150B-36. Final decision.

5 (a) Before the agency makes a final decision, it shall give
6 each party an opportunity to file exceptions to the decision
7 recommended by the administrative law judge, and to present
8 written arguments to those in the agency who will make the final
9 decision or order. If a party files in good faith a timely and
10 sufficient affidavit of personal bias or other reason for
11 disqualification of a member of the agency making the final
12 decision, the agency shall determine the matter as a part of the
13 record in the case, and the determination is subject to judicial
14 review at the conclusion of the case.

15 (b) A final decision or order in a contested case shall be made
16 by the agency in writing after review of the official record as
17 defined in G.S. 150B-37(a) and shall include findings of fact and
18 conclusions of law. If the agency does not adopt the
19 administrative law judge's recommended decision as its final
20 decision, the agency shall state in its decision or order the
21 specific reasons why it did not adopt the administrative law
22 judge's recommended decision. The agency may consider only the
23 official record prepared pursuant to G.S. 150B-37 in making a
24 final decision or order, and the final decision or order shall be
25 supported by substantial evidence admissible under G.S.
26 150B-29(a), 150B-30, or 150B-31. A copy of the decision or order
27 shall be served upon each party personally or by certified mail
28 addressed to the party at the latest address given by the party
29 to the agency, and a copy shall be furnished to his attorney of
30 record and the Office of Administrative Hearings.

31 (c) The following decisions made by administrative law judges
32 in contested cases are final decisions:

33 (1) A determination by an administrative law judge in a
34 contested case that the Office of Administrative
35 Hearings lacks jurisdiction, or an jurisdiction.

36 (2) An order entered pursuant to the authority in G.S.
37 7A-759(e) shall constitute a final decision. 7A-
38 759(e).

39 (3) An order entered pursuant to a prehearing motion
40 that either dismisses the contested case for
41 failure of the petitioner to prosecute or grants
42 the relief requested when the party against whom
43 the petition is filed does not comply with
44 procedural requirements.

1 (4) An order entered pursuant to a prehearing motion to
2 dismiss the contested case in accordance with G.S.
3 1A-1, Rule 12(b) when the order disposes of all
4 issues in the contested case."

5 Sec. 8. G.S. 150B-39(c) reads as rewritten:

6 (c) ~~An agency may issue subpoenas in~~ In preparation for, or in
7 the conduct of, a contested case ~~upon its own motion. If a~~
8 ~~written request is made by a party in a contested case, an agency~~
9 ~~shall issue subpoenas forthwith requiring the attendance and~~
10 ~~testimony of witnesses and the production of evidence including~~
11 ~~books, records, correspondence, and documents in their possession~~
12 ~~or under their control. subpoenas may be issued and served in~~
13 accordance with G.S. 1A-1, Rule 45. ~~Upon written request, a~~
14 motion, the agency shall revoke ~~may quash~~ a subpoena if, upon a
15 hearing, the agency finds that the evidence, the production of
16 which is required, does not relate to a matter in issue, ~~or if~~
17 the subpoena does not describe with sufficient particularity the
18 evidence the production of which is required, ~~or if~~ for any other
19 reason sufficient in law the subpoena ~~is invalid, may be quashed.~~
20 Witness fees shall be paid by the party requesting the subpoena
21 to subpoenaed witnesses in accordance with G.S. 7A-314. However,
22 State officials or employees who are subpoenaed shall not be
23 entitled to any witness fees, but they shall receive their normal
24 salary and they shall not be required to take any annual leave
25 for the witness days. Travel expenses of State officials or
26 employees who are subpoenaed shall be reimbursed as provided in
27 G.S. 138-6.

28 Sec. 9. G.S. 150B-44 reads as rewritten:

29 "§ 150B-44. Right to judicial intervention when decision
30 unreasonably delayed.

31 Unreasonable delay on the part of any agency or administrative
32 law judge in taking any required action shall be justification
33 for any person whose rights, duties, or privileges are adversely
34 affected by such delay to seek a court order compelling action by
35 the agency or administrative law judge. ~~Except for an agency~~
36 ~~that is a board or commission, an agency's failure to make a~~
37 ~~final decision within 60 days of the date on which all exceptions~~
38 ~~or arguments are filed under G.S. 150B-36(a) with the agency~~
39 ~~constitutes an unreasonable delay. A board or commission's~~
40 ~~failure to make a final decision within the later of the 60 days~~
41 ~~allowed other agencies or 60 days after the board's or~~
42 ~~commission's next regularly scheduled meeting constitutes an~~
43 ~~unreasonable delay. An agency that is subject to Article 3 of~~
44 this Chapter and is not a board or commission has 180 days from

1 the day it receives the official record in a contested case from
2 the Office of Administrative Hearings to make a final decision in
3 the case. An agency that is subject to Article 3 of this Chapter
4 and is a board or commission has 180 days from the day it
5 receives the official record in a contested case from the Office
6 of Administrative Hearings or 180 days after its next regularly
7 scheduled meeting, whichever is longer, to make a final decision
8 in the case. If an agency subject to Article 3 of this Chapter
9 has not made a final decision within these time limits, the
10 agency is considered to have adopted the administrative law
11 judge's recommended decision as the agency's final decision
12 unless the parties to the contested case agree to extend the time
13 limit. Failure of an agency subject to Article 3A of this
14 Chapter to make a final decision within 180 days of the close of
15 the contested case hearing is justification for a person whose
16 rights, duties, or privileges are adversely affected by the delay
17 to seek a court order compelling action by the agency or, if the
18 case was heard by an administrative law judge, by the
19 administrative law judge."

20 Sec. 10. G.S. 150B-46 reads as rewritten:
21 "§ 150B-46. Contents of petition; copies served on all parties;
22 intervention.

23 The petition shall explicitly state what exceptions are taken
24 to the decision or procedure and what relief the petitioner
25 seeks. Within 10 days after the petition is filed with the court,
26 the party seeking the review shall serve copies of the petition
27 by personal service or by certified mail upon all who were
28 parties of record to the administrative proceedings. Names and
29 addresses of such parties shall be furnished to the petitioner by
30 the agency upon request. Any party to the administrative
31 proceeding ~~may become~~ is a party to the review proceedings by
32 ~~notifying the court within 10 days after receipt of the copy of~~
33 ~~the petition. unless the party withdraws by notifying the court of~~
34 ~~the withdrawal and serving the other parties with notice of the~~
35 ~~withdrawal.~~

36 Any person aggrieved may petition to become a party by filing a
37 motion to intervene as provided in G.S. 1A-1, Rule 24."

38 Sec. 11. Section 19 of Chapter 746 of the 1985 Session
39 Laws reads as rewritten:

40 "Sec. 19. This act is effective upon ratification, except
41 Sections 1, 4, 5, 6, 8, 13, 14, 15, 16, 17, 18, and 18.1.
42 Sections 1, 4, 8, 13, 14, 15, 16, 17, and 18 shall become
43 effective January 1, 1986. Sections 5 and 6 shall become
44 effective 30 days from the date the Supreme Court issues an

1 advisory opinion on the constitutionality of those sections
2 unless the opinion states that those sections are
3 unconstitutional, in which event those sections shall not become
4 effective. Section 18.1 shall become effective only if the
5 Supreme Court issues an advisory opinion that the appointment of
6 the chief hearing officer by the Chief Justice is
7 unconstitutional and shall become effective on the date that
8 opinion is issued. ~~This act shall expire January 1, 1992, and~~
9 ~~shall not be effective on or after that date.~~ This act shall not
10 affect contested cases commenced before January 1, 1986."

11 Sec. 12. This act is effective upon ratification and
12 applies to contested cases commenced on or after that date.



EXPLANATION OF LEGISLATIVE PROPOSAL II

This bill proposes a number of amendments to Article 3, Chapter 150B, Administrative Hearings.

Section 1 of the bill makes a number of amendments to G.S. 150B-23. Commencement; contested case assignment of administrative law judge; hearing required; notice; intervention. First, in G.S. 150B-23(a) the requirement that a petition be verified and supported by affidavit is replaced by a requirement that the petition be signed by a party or his representative. In any dispute involving a license, the person holding the license must be served with a copy of the petition. Next, a new subsection G.S. 150B-23(a2) is added permitting the ALJ to require prehearing statements.

Section 1 also amends G.S. 150B-23(b), governing Notice of Hearing requirements, to reflect the filing of prehearing statements. Where such statements have not been filed, the notice shall state the date, hour, place and nature of the hearing, list the statutes and rules involved and give a short statement of the facts.

Section 2 of the bill repeals G.S. 150B-25(b) which permitted a written response by a party receiving a notice of hearing.

Section 3 of the bill rewrites G.S. 150B-27 to permit subpoenas to be issued by the parties in accordance with Rule 45 of the N. C. Rules of Civil Procedure.

Section 4 of the bill amends G.S. 150B-29(a), Evidence, and provides that the ALJ may exclude inadmissible evidence on his own motion.

Section 5 amends G.S. 150B-33(b) setting out the powers of the ALJ. The amendments make it clear that the ALJ has authority to rule on subpoenas, objections to discovery, and all prehearing motions in accordance with the Rules of Civil Procedure.

Section 6 of the bill amends G.S. 150B-34(b) to give the ALJ discretion whether to ask the parties to submit proposed findings of fact and written arguments. Parties not ordered to file proposed findings and written arguments retain the discretion to file them if they wish.

Section 7 of the bill rewrites portions of G.S. 150B-36, Final Decision. First, the bill would permit parties to file affidavits of personal bias or disqualification of the person making the final agency decision. The agency's determination would be subject to judicial review. The bill also provides that the ALJ's decision in a contested case would be final in the following instances:

- (1) An order entered pursuant to a prehearing motion dismissing the contested case for failure of the plaintiff to prosecute or granting requested relief when a party does not comply with procedural requirements.
- (2) An order entered on a prehearing motion to dismiss the case under Rule 12 (b) when the order disposes of all issues in the case.

Section 8 of the bill permits parties in an Article 3A contested case hearing to issue subpoenas in accordance with Rule 45 of the N.C. Rules of Civil Procedure.

Section 9 of the bill rewrites G.S. 150B-44 to provide that when an agency has not made a final decision within 180 days of receipt of the official record in a contested case, the recommended decision of the ALJ becomes the final agency decision unless the parties agree to an extension of time.

Section 10 of the bill amends G.S. 150B-46. Contents of petition; copies served on all parties; intervention. The amendment clarifies existing law providing that any party to the administrative hearing is a party on judicial review unless the party withdraws by notifying the court of the withdrawal.

Section 11 of the bill removes the sunset provision on the Revised Administrative Procedure Act.

Section 12 provides that the act is effective upon ratification and applies to cases commenced on or after that date.

APPENDIX A

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION
RATIFIED BILL

CHAPTER 802
SENATE BILL 231

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, TO MAKE APPROPRIATIONS THEREFOR, AND TO DIRECT VARIOUS STATE AGENCIES TO STUDY SPECIFIED ISSUES.

The General Assembly of North Carolina enacts:

PART I. TITLE

Section 1. This act shall be known as "The Studies Act of 1989."

...

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1989 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study. The topics are:

- (6) Administrative Procedure Act's Rule-Making Process (S.B. 535 - Johnson) and Office of Administrative Hearings and the Administrative Rules Review Commission (S.J.R. 1003 -Martin of Guilford, H.B. 1459 - Michaux).

...

Sec. 2.4. Committee Membership. For each Legislative Research Commission Committee created during the 1989-1991 biennium, the Cochairmen of the Commission each shall appoint a minimum of seven members.

Sec. 2.5. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1990 Session of the 1989 General Assembly or the 1991 General Assembly, or both.

Sec. 2.6. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have

incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 2.7. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

...

PART XXV.-----EFFECTIVE DATE

Sec. 25.1. This act shall become effective July 1, 1989.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

1

SENATE JOINT RESOLUTION 1003*
(House Joint Resolution 1459)

Sponsors: Senators Martin of Guilford; Block, Guy, Hardin,
Johnson of Cabarrus, Kaplan, and Speed.

Referred to: Rules.

April 25, 1989

- 1 A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH
2 COMMISSION TO STUDY THE OPERATION OF THE OFFICE OF
3 ADMINISTRATIVE HEARINGS AND THE ADMINISTRATIVE RULES REVIEW
4 COMMISSION.
- 5 Be it resolved by the Senate, the House of Representatives
6 concurring:
- 7 Section 1. The Legislative Research Commission may
8 study:
- 9 (1) Whether the effectiveness and the efficiency of the
10 Office of Administrative Hearings could be improved
11 by staffing modifications;
- 12 (2) What functions, if any, of the Office of
13 Administrative Hearings or of the Administrative
14 Rules Review Commission could be transferred to the
15 Office of the Secretary of State or to some other
16 appropriate office or agency;
- 17 (3) The appropriateness of the existing personnel
18 classifications and pay grades within the Office of
19 Administrative Hearings and the Administrative

1 Rules Review Commission, and what modifications, if
2 any, should be made;

3 (4) The equity and appropriateness of the longevity
4 program established for the Chief Administrative
5 Law Judge and the Administrative Law Judges;

6 (5) Appropriate oversight of the Office of
7 Administrative Hearings and of the Administrative
8 Rules Review Commission;

9 (6) The process for appointment of the Chief
10 Administrative Law Judge;

11 (7) Whether the purposes for which the Office of
12 Administrative Hearings and the Administrative
13 Rules Review Commission are being effectively
14 served, and whether these purposes are still
15 appropriate;

16 (8) The appropriateness of compensation, expense
17 reimbursements, and per diem for members of the
18 Administrative Rules Review Commission; and

19 (9) Various policies, procedures and practices of the
20 Office of Administrative Hearings and of the
21 Administrative Rules Review Commission to determine
22 the extent to which State resources are used
23 efficiently and effectively.

24 Sec. 2. If the study authorized by Section 1 of this
25 resolution is conducted, the Legislative Research Commission
26 shall make a final report to the 1991 Session of the General
27 Assembly, and may make an interim report to the 1989 Session,
28 Regular Session, 1990.

29 Sec. 3. This resolution is effective upon ratification.

APPENDIX B

MEMBERSHIP OF LRC COMMITTEE ON THE ADMINISTRATIVE PROCEDURE ACT

LRC Member in Charge:

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APPENDIX C

SPEAKERS APPEARING BEFORE THE APA STUDY COMMITTEE

Myron C. Banks,	Deputy Secretary, Department of Revenue
John Barkley,	Office of General Counsel, Department of Environment, Health, and Natural Resources
Bruce Briggs,	Consultant for the Industrial Commission
James P. Cain,	Chair, Administrative Rules Review Commission
Charles Case,	Chemical Industry Counsel of North Carolina
William C. Deal,	Assistant Secretary, Department of Transportation
Lorrie L. Dollar,	Legal Counsel, Department of Correction
Ann Q. Duncan,	Employment Security Commission
Susan Frost,	Commission Counsel, Administrative Rules Review Commission
Nick Fountain,	Chair, North Carolina Bar Association Task Force on Administrative Law and Procedure
Jane Gray,	Assistant Attorney General
Thomas Harrelson,	Secretary, Department of Transportation
John Hunter,	Office of General Counsel, Department of Environment, Health, and Natural Resources
Charles Jeffress,	Department of Labor
Julian Mann,	Executive Director, Office of Administrative Hearings
Bill Marley,	Department of Transportation
Dan McLawhorn,	Assistant Attorney General
William Redman,	Chair, Utilities Commission
Ann Reed,	Chair, Administrative Law Section, N.C. Bar Association
Chris Scott,	Employment Security Commission
Ann Sellars,	Industrial Commission

Greg Stahl, **Department of Correction**
William Stevenson, **Industrial Commission**
Jim Sughrue, **Department of Transportation**